

MAINTENANCE ACT.

Act No. 74, 1964.

An Act relating to the maintenance of wives, husbands, children and illegitimate children; to repeal the Deserted Wives and Children Act, 1901–1960, the Interstate Destitute Persons Relief Act, 1919–1960, and certain other Acts; to amend the Child Welfare Act, 1939–1961, the Maintenance Orders (Facilities for Enforcement) Act, 1923, and certain other Acts; and for purposes connected therewith. [Assented to, 21st December, 1964.]

Elizabeth II,
No. 74, 1964

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Maintenance Act, 1964".

Short title,
commence-
ment and
division
of Act.

(2) Except as provided in subsection three of this section, this Act shall commence upon a day to be appointed by the Governor pursuant to this subsection and notified by proclamation published in the Gazette.

(3) Division 2 of Part III, and the several provisions of Part IV, of this Act shall commence upon such day or days (being not earlier than the day appointed pursuant to subsection two of this section) as may be appointed in respect thereof by the Governor and notified by proclamation published in the Gazette.

(4)

No. 74, 1964 (4) This Act is divided into Parts and Divisions as follows :—

PART I.—PRELIMINARY—ss. 1–7.

PART II.—MAINTENANCE AND OTHER ORDERS—
ss. 8–40.

DIVISION 1.—*Jurisdiction and Powers of Children's Courts*—ss. 8–21.

DIVISION 2.—*Ancillary Orders*—ss. 22–25.

DIVISION 3.—*General*—ss. 26–34.

DIVISION 4.—*Discharge, Suspension, Variation and Annulment of Orders*—ss. 35–40.

PART III.—ENFORCEMENT OF ORDERS MADE IN NEW SOUTH WALES—ss. 41–65.

DIVISION 1.—*Enforcement by Imprisonment, Registration of Certificate of Arrears, Recognizances, or Sale of Goods*—ss. 41–47.

DIVISION 2.—*Enforcement by Attachment of Earnings*—ss. 48–63.

DIVISION 3.—*General*—ss. 64–65.

PART IV.—RECIPROCAL ENFORCEMENT OF ORDERS—
ss. 66–104.

DIVISION 1.—*Interpretation and Administration*—
ss. 66–69.

DIVISION 2.—*Interstate Maintenance*—ss. 70–79.

DIVISION 3.—*Overseas Maintenance*—ss. 80–96.

DIVISION 4.—*General*—ss. 97–104.

PART V.—MISCELLANEOUS—ss. 105–120.

DIVISION 1.—*Procedural*—ss. 105–112.

DIVISION 2.—*Appeals*—s. 113.

DIVISION 3.—*General*—ss. 114–120.

SCHEDULES.

2. (1) The several Acts specified in Schedule One to this Act are, to the extent that they are unrepealed, hereby repealed.

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Repeals,
amendments
and cita-
tions.

(2) Each Act (as amended by subsequent Acts, if any) specified in column 1 of Schedule Two to this Act is amended as specified opposite that Act in column 2 of that Schedule.

(3) Each Act, specified in column 1 of Schedule Three to this Act and as amended by subsequent Acts, if any, and by this Act, may be cited in the manner specified opposite that Act in column 2 of that Schedule.

3. (1) Any order—

(a) made under the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts, and in force at the appointed day; or

Savings—
Deserted
Wives and
Children
Act and
Child
Welfare
Act.

(b) made in any proceedings referred to in subsection two of this section,

is deemed to be, and may be enforced, discharged, suspended, varied or annulled as if it were, a like order made under Part II of this Act, but an appeal against such an order may only be made under and in accordance with the provisions of the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts, as the case may require, and for the purposes of any such appeal those provisions are, notwithstanding section two of this Act, deemed to continue in full force and effect.

(2) Any proceedings commenced under the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts, before, and not completed at,

the

No. 74, 1964 the appointed day may be continued and completed, and any order may be made in those proceedings, as if section two of this Act had not been enacted.

(3) Any moneys owing at the appointed day under an order made under the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or under Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts, are, whether or not the order has ceased to have effect, deemed to be moneys owing under a like order made under Part II of this Act, and the payment of those moneys may be enforced accordingly.

(4) In this section "appointed day" means the day upon which Part II of this Act commences.

Savings—
Interstate
Destitute
Persons
Relief Act.

4. (1) Where immediately before the appointed day an interstate order was enforceable under the repealed Act, that interstate order shall, on and from that day, be deemed to be registered under Division 2 of Part IV of this Act in the Metropolitan Children's Court at Sydney.

(2) Any proceedings for the enforcement of a maintenance order as referred to in section sixteen of the repealed Act that were commenced before, but not completed at, the appointed day may be continued and completed, and any order may be made in those proceedings, as if section two of this Act had not been enacted.

(3) Any proceedings commenced under subsection one of section 16A of the repealed Act and not completed at the appointed day may be continued and completed, and a provisional order may be made in those proceedings, as if section two of this Act had not been enacted.

(4) Any proceedings commenced under subsection two of section 16A of the repealed Act and not completed at the appointed day may be continued and completed, and any order may be made in those proceedings, as if section two of this Act had not been enacted.

(5)

(5) A provisional order made (whether before or after the appointed day) under subsection one of section 16A of the repealed Act is deemed to be a provisional order made under section seventy-three of this Act. No. 74, 1964

(6) An order confirming, with or without modification, or discharging a provisional order and made (whether before or after the appointed day) under subsection two of section 16A of the repealed Act is deemed to be a like order made under section seventy-eight of this Act.

(7) Any moneys owing at the appointed day under an interstate order that is deemed by subsection one of this section to be registered under Division 2 of Part IV of this Act are deemed to be moneys owing under a like order registered under Division 2 of Part IV of this Act, and the payment of those moneys may be enforced accordingly.

(8) In this section—

“Appointed day” means the day upon which Division 2 of Part IV of this Act commences.

“Interstate order” has the meaning ascribed thereto by Division 1 of Part IV of this Act.

“Repealed Act” means the Interstate Destitute Persons Relief Act, 1919, as amended by subsequent Acts.

5. (1) Where—

- (a) immediately before the appointed day an interstate order was registered under the amended Act in a court; or
- (b) at any time before that day an interstate order had been confirmed under the amended Act in a court and was immediately before that day enforceable in New South Wales,

Savings—
Maintenance
Orders
(Facilities
for Enforcement)
Act.

the order is, on and from that day, deemed to be registered under Division 2 of Part IV of this Act in the court in which it was so registered or had been so confirmed and, on and from that day, ceases to be enforceable under the amended Act.

(2)

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(2) Where immediately before the appointed day an interstate order was registered in the Supreme Court of New South Wales under the amended Act, the order is, on and from that day, deemed to be registered under Division 2 of Part IV of this Act in the Metropolitan Children's Court at Sydney and, on and from that day, ceases to be enforceable under the amended Act.

(3) Where—

- (a) a country becomes a reciprocating country; and
- (b) it was, immediately before the prescribed date, a reciprocating State within the meaning of the amended Act;

then—

- (c) any overseas order made in that reciprocating country—
 - (i) that immediately before the prescribed date was registered in a court; or
 - (ii) that at any time before the prescribed date had been confirmed in a court and was immediately before that date enforceable in New South Wales,

is, on and from the prescribed date, deemed to be registered or enforceable as a confirmed order, as the case may be, under Division 3 of Part IV of this Act, in the court in which it was so registered or had been so confirmed and, on and from that date, ceases to be enforceable under the amended Act; and

- (d) any overseas order made in that reciprocating country that immediately before the prescribed date was registered in the Supreme Court of New South Wales under the amended Act is, on and from that date, deemed to be registered under Division 3 of Part IV of this Act in the Metropolitan Children's Court at Sydney and, on and from that date, ceases to be enforceable under the amended Act.

(4) An interstate order shall not be registered under the amended Act after the appointed day.

(5)

(5) An overseas order made in a reciprocating country shall not be registered under the amended Act after the day upon which that country became a reciprocating country. **No. 74, 1964**

(6) No proceedings under section six of the amended Act—

- (a) for the confirmation of an interstate order shall be commenced after the appointed day; or
- (b) for the confirmation of an overseas order made in a reciprocating country shall be commenced after the day upon which that country became a reciprocating country.

(7) Where—

- (a) a provisional interstate order is confirmed under section six of the amended Act after the appointed day; or
- (b) a provisional overseas order made in a reciprocating country is confirmed under section six of the amended Act after the prescribed date,

the order is on and from the date of its confirmation deemed, in the case of an interstate order, to be registered under Division 2, and, in the case of an overseas order, to be enforceable as a confirmed order, under Division 3, of Part IV of this Act in the court in which it is so confirmed and, on and from that date, ceases to be enforceable under the amended Act.

(8) No order shall be made under section five of the amended Act upon an application for a maintenance order if the person against whom the order is sought is proved to be resident in a reciprocating country.

(9) Any moneys—

- (a) owing at the appointed day under an interstate order that is deemed by subsection one, two or seven of this section to be registered under Division 2 of Part IV of this Act; or
- (b) owing at the prescribed date under an overseas order made in a reciprocating country, being an order that is deemed, by subsection three or seven of

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of this section, to be registered or enforceable as a confirmed order, as the case may be, under Division 3 of Part IV of this Act,

are deemed to be moneys owing under a like order registered or confirmed, as the case may be, under Division 2 or 3 of Part IV of this Act, as the case may be, and the payment of those moneys may be enforced accordingly.

(10) In this section—

“Amended Act” means the Maintenance Orders (Facilities for Enforcement) Act, 1923.

“Appointed day” means—

- (a) in relation to interstate orders, the day upon which Division 2 of Part IV of this Act commences; and
- (b) in relation to overseas orders, the day upon which Division 3 of Part IV of this Act commences.

“Country”, “country having restricted reciprocity”, “interstate order”, “maintenance order”, “overseas order” and “reciprocating country” have the meanings ascribed thereto respectively by Division 1 of Part IV of this Act.

“Prescribed date”, in relation to a reciprocating country, means the date upon which that country became a reciprocating country.

Plural orders deemed to be separate orders. 6. An order that is deemed by this Part to be an order under Part II of this Act or to be registered or enforceable as a confirmed order under Part IV of this Act and that is for the benefit of two or more persons shall be deemed to be a separate order in respect of each of the persons for whose benefit the order was made.

Interpretation. 7. (1) In this Act unless inconsistent with the context or subject-matter—

“Adopted” means—

- (a) adopted in accordance with the law of New South Wales, or the law of another State or of a Territory of the Commonwealth;
- (b)

- (b) adopted in a country outside Australia and the Territories of the Commonwealth, if the adoption was effective according to the law of that country and the adoption is recognized by the law of New South Wales as having effect in New South Wales. No. 74, 1964

“Child”, in relation to any person or persons, includes an illegitimate or adopted child of that person or, as the case may be, of those persons, but does not include a child of that person or those persons adopted by another person or persons; and “mother”, “father” and “parent”, in relation to a child, shall be construed accordingly.

“Child of the family”, in relation to the parties to a marriage or to either of them and whether or not either party to the marriage is dead, means—

- (a) any child of both parties; and
- (b) any child of either party who has been accepted as one of the family by the other party,

and “mother”, “father” and “parent”, in relation to a child of the family, shall be construed accordingly.

“Commonwealth” means the Commonwealth of Australia.

“Court” means a children’s court established under the Child Welfare Act, 1939, as amended by subsequent Acts.

“Justice” means justice of the peace in and for the State of New South Wales.

“Preliminary expenses”, in respect of the confinement of a woman, means the expenses of the maintenance of the woman during the period of two months immediately preceding the confinement, reasonable medical, surgical, hospital and nursing expenses attendant upon the confinement, and the expenses of the maintenance of the woman and the child or children born to the woman during the confinement for three months immediately after birth.

“Prescribed”

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“Prescribed” means prescribed by regulations made under this Act.

“Special magistrate” means a special magistrate under the Child Welfare Act, 1939, as amended by subsequent Acts.

“Territory of the Commonwealth” includes a Territory under the trusteeship of the Commonwealth.

(2) For the purposes of the interpretation of “child of the family” a child of either party to the marriage shall, in the absence of proof to the contrary, be taken to have been accepted by the other party as one of the family if it is proved that at any time the child was ordinarily a member of the family household.

(3) For the purposes of this Act a man and a woman married by a subsisting marriage, whether monogamous or polygamous, shall if the marriage is lawful and binding in the place where it was solemnized be regarded as husband and wife.

(4) For the purposes of this Act—

(a) in determining whether a person has been left without adequate means of support provided by another person, the court shall have regard to the accustomed condition in life, but not the means (not being means provided by that other person) or earning capacity, of the first-mentioned person; and

(b) the fact that payments have been made by the defendant for or towards the maintenance of the complainant since the date of the complaint may be disregarded by the court in determining whether the complainant is left without adequate means of support provided by the defendant at the date of the hearing of the complaint, unless the court is satisfied that it is probable that the defendant bona fide intends to provide adequate means of support for the complainant.

(5) A reference in this Act to a person for whose benefit an order is sought or made shall not be construed as a reference to a person who makes a complaint or an application on behalf of another person.

PART II.

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MAINTENANCE AND OTHER ORDERS.

DIVISION 1.—*Jurisdiction and Powers of Children's Courts.*

8. (1) A court shall have jurisdiction to make an order ^{Jurisdiction} under this Part (not being an order under section twenty- ^{of children's} two of this Act)—

- (a) if the person against whom the order is sought; or
- (b) if the person for whose benefit the order is sought, is resident in New South Wales.

(2) A court shall have jurisdiction to make an order under section twenty-two of this Act—

- (a) if the child in respect of whom the order is sought is present in New South Wales at the time the order is made; and
- (b) if either the applicant or the respondent in the proceedings in which the order is sought is resident in New South Wales.

(3) Subject to this section, a court shall have jurisdiction to make an order under this Part whether or not the facts or circumstances, or any of them, the existence or occurrence of which is necessary for the making of the order, took place before the commencement of this Part or outside New South Wales.

(4) Nothing in this Act shall limit or affect the operation of any provision of any other Act (whether relating to child welfare or family welfare or social services or otherwise), or any law, by which any person is or may be required to make contribution to or payment on account of the maintenance or support of any other person.

9. Where it is necessary for the court to be satisfied, ^{Complaint} before making an order under this Act, that the complainant ^{may be} has been, is, or is about to be, left without adequate means ^{answered} of support provided by the defendant, the court shall not ^{by showing} make ^{just cause} or excuse.

No. 74, 1964 make the order if, upon any evidence before it, it is satisfied that the defendant had, has, or will have, as the case may be, just cause or excuse for so leaving the complainant.

Matters
affecting
amount of
orders.

10. (1) In determining the amount that a defendant is to be ordered to pay by an order under section eleven, twelve, thirteen, fifteen, sixteen, eighteen or subsection four of section twenty-two, of this Act the court shall have regard, where appropriate, to—

- (a) the accustomed condition in life of the person for whose benefit the order is to be made; and
- (b) any evidence before the court as to the means and earning capacity of the defendant and that person and the ability of the defendant to pay,

but may, in its discretion, disregard—

- (c) the earnings or savings from earnings from an occupation engaged in by that person, or any part of those earnings or savings, if it is satisfied that that person engaged in that occupation solely or mainly because that person was, or reasonably expected to be, left without adequate means of support; and
- (d) the earning capacity of that person, if it is satisfied that that person would engage in an occupation solely or mainly because that person is, or reasonably expects to be, left without adequate means of support.

(2) In the case of an order for the benefit of a child of the family, the expression—

- (a) “defendant”, in paragraph (b) of subsection one of this section; and
- (b) “that person”, in paragraphs (c) and (d) of that subsection,

includes the parent of the child, not being the parent who is the defendant.

(3)

(3) In determining the amount that a defendant is to be ordered to pay by an order under this Part—

- (a) in respect of a child who is a ward within the meaning of the Child Welfare Act, 1939, as amended by subsequent Acts; or
- (b) in respect of a child for whose support an allowance has been granted by the Minister under the Child Welfare Act, 1939, as amended by subsequent Acts,

no regard shall be had to the fact that the child is such a ward or that such an allowance has been granted.

11. Where the court, upon complaint made by or on behalf of a wife, is satisfied—

- (a) that she is left by her husband without adequate means of support provided by him and was so left on the date alleged in the complaint; or
- (b) that her husband is about to remove out of New South Wales or into a distant part of New South Wales and leave her without adequate means of support provided by him,

the court may order the husband to pay for or towards her maintenance such amount as it thinks reasonable.

12. Where the court, upon complaint made on behalf of a child of the family, is satisfied—

- (a) that the child is left by the father without adequate means of support provided by him and was so left on the date alleged in the complaint; or
- (b) that the father is about to remove out of New South Wales or into a distant part of New South Wales and leave the child without adequate means of support provided by him,

the court may order the father to pay for or towards the maintenance of the child such amount as it thinks reasonable.

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No. 74, 1964 **13.** Where the court, upon complaint made on behalf of a child of the family, is satisfied—

Court may order mother to support children.

- (a) that the child is left by the mother without adequate means of support provided by her and was so left on the date alleged in the complaint; or
- (b) that the mother is about to remove out of New South Wales or into a distant part of New South Wales and leave the child without adequate means of support provided by her,

the court may order the mother to pay for or towards the maintenance of the child such amount as it thinks reasonable.

14. Where the court, upon complaint made by or on behalf of a husband, is satisfied that the husband is unable to support himself adequately and—

Court may order wife to support husband.

- (a) that he is left by his wife without adequate means of support provided by her and was so left on the date alleged in the complaint; or
- (b) that his wife is about to remove out of New South Wales or into a distant part of New South Wales and leave him without adequate means of support provided by her,

the court may order the wife to pay for or towards his maintenance such amount as it thinks reasonable, having regard to his accustomed condition in life, his means and earning capacity at the time of the hearing and any evidence before the court as to his wife's means, earning capacity and ability to pay maintenance.

15. Where the court, upon complaint made on behalf of an illegitimate child, is satisfied that the defendant is the father of the child and—

Court may order father to support illegitimate child.

- (a) that the child is left by the defendant without adequate means of support provided by him and was so left on the date alleged in the complaint;
- or

(b)

- (b) that the defendant is about to remove out of New South Wales or into a distant part of New South Wales and leave the child without adequate means of support provided by the defendant, No. 74, 1964

the court may order the defendant to pay for or towards the maintenance of the child such amount as it thinks reasonable.

16. Where the court, upon complaint made on behalf of an illegitimate child is satisfied— Court may order mother to support illegitimate child.

- (a) that the child is left by the mother without adequate means of support provided by her and was so left on the date alleged in the complaint; or
- (b) that the mother is about to remove out of New South Wales or into a distant part of New South Wales and leave the child without adequate means of support provided by the mother.

the court may order the mother to pay for or towards the maintenance of the child such amount as it thinks reasonable.

17. (1) Where the court, upon complaint made by or on behalf of a woman, is satisfied— Court may make orders for payment of preliminary expenses.

- (a) that she is pregnant by the defendant (not being her husband) or has been delivered of a child or a stillborn child of whom the defendant (not being her husband) is the father; and
- (b) that he has not made adequate provision for the payment of her preliminary expenses,

the court may order the defendant to pay for or towards preliminary expenses such amount as it thinks reasonable.

(2) A complaint referred to in subsection one of this section or a claim referred to in subsection eight of this section shall not be made after the expiration of twelve months after the birth or stillbirth of the child.

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(3) An order shall not be made under subsection one of this section where the woman for whose benefit the order is sought is pregnant unless the court is satisfied by the evidence or a certificate of a medical practitioner that the woman is quick with child.

(4) Where an order under subsection one of this section was made in the case of a woman who was pregnant by the defendant and—

- (a) the woman is not delivered of a child or stillborn child before a date specified in the order for the purposes of this subsection, being a date not later than six months after the order was made; or
- (b) the woman is delivered of a stillborn child before the date so specified,

the order ceases to have effect on the date so specified or on the delivery of the stillborn child, as the case may be.

(5) Where an order ceases to have effect on the date specified in it for the purposes of subsection four of this section, any moneys paid under it and not disbursed shall be repaid to the defendant.

(6) Where an order ceases to have effect on the delivery of a stillborn child, any moneys paid under it and not disbursed shall, as directed by the court—

- (a) be paid to the woman;
- (b) be repaid to the defendant; or
- (c) be divided between the woman and the defendant in such proportions as the court thinks fit.

(7) Where an order is made under subsection one of this section in the case of a woman who is pregnant by the defendant—

- (a) the clerk of the court may, if the order directed the payment of the preliminary expenses to him, disburse any amount paid under the order in such manner.

manner as he thinks proper, or, if the order directed No. 74, 1964 the payment of the preliminary expenses to a member of the police force, give, in writing, such directions as he thinks proper with respect to the disbursement by that member of any amounts paid under the order, but not so as to direct the disbursement, before the woman is delivered of a child or stillborn child, of amounts aggregating more than one-half of the amount to be paid under the order; and

- (b) amounts paid under the order shall not be disbursed otherwise than in accordance with directions so given.

(8) Where a complaint has been made under section fifteen of this Act, the court may, if a claim for preliminary expenses is made at the hearing of the complaint, and subject to subsection two of this section, make an order under subsection one of this section for the payment of those expenses, notwithstanding that a complaint has not been made under this section.

(9) Where a claim referred to in subsection eight of this section is made, the court shall, if it is of opinion that the defendant would be prejudiced unless the hearing were adjourned, on the application of the defendant adjourn the hearing for such period as it thinks fit.

(10) The adoption of a child whether before or after the commencement of this Part does not prevent the making of an order for preliminary expenses in the same manner as if the child had not been adopted and does not affect the validity or operation of any order for preliminary expenses in respect of the child.

(11) The death of a child whether before or after the commencement of this Part does not prevent the making of an order for preliminary expenses in the same manner as if the child had not died.

(12) In this section "child" includes adopted child.

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Court may
make order
for future
maintenance
of child
upon com-
plaint for
preliminary
expenses.

18. (1) Where a court makes an order for or towards the payment of preliminary expenses under section seventeen of this Act, being an order made before the birth of the child to which it relates, it may, upon complaint made by or on behalf of the person for whose benefit the order is made and if it appears probable that the child will, at the expiration of three months after birth, be left without adequate means of support provided by the father of the child, order the father to pay for or towards the maintenance of the child such amount as it thinks reasonable.

(2) An order under subsection one of this section takes effect—

- (a) where a certified copy of the registration of the birth of the child is produced to the clerk of the court by which the order is made within a period of three months after the birth of the child—on the Monday last preceding the expiration of that period; or
- (b) where such a certified copy is not so produced—upon the production to that clerk of that certified copy.

(3) An order under subsection one of this section does not take effect if the child to whom it relates is stillborn or dies or is adopted before the order would otherwise take effect.

(4) An order under subsection one of this section shall not be made requiring a person to make payments for or towards the maintenance of a child unless—

- (a) the person has consented to the making of the order; or
- (b) the person has been given notice of the complainant's intention to apply for the order.

(5) Where a certified copy of the registration of the birth of the child in relation to whom an order has been made under subsection one of this section is produced to the clerk of the court, the clerk shall forthwith send by post to the defendant at his usual or last known place of residence or business

business notice in writing of the name of the child, if shown No. 74, 1964 in the certified copy, and of the date and place of birth of the child and the date on which and place at which the first payment under the order is required to be made.

19. (1) Where—

- (a) the court, upon complaint made by or on behalf of a parent (in this paragraph referred to as the “complainant”) of a legitimate child (including an adopted child) is satisfied that the child was a child of the family who died before attaining the age of sixteen years and—
- Court may
make order
for funeral
expenses of
children.
- (i) that the complainant was, at the date of the death, entitled to receive payments under an order for the maintenance of the child from the other parent;
 - (ii) that an order for the maintenance of the complainant was, at the date of the death, in force under which the other parent was directed to make payments for the benefit of that parent; or
 - (iii) that at the date of death there was in force an order under section twenty-three of this Act directing the payment by the other parent of a nominal amount in respect of the child or the complainant; or
- (b) the court, upon complaint made by or on behalf of a parent of a legitimate stillborn child, is satisfied that the child quickened and that an order for the maintenance of the parent was in force at the date of the stillbirth,

and the court is also satisfied that the other parent of the child has not made adequate provision for the funeral expenses of the child, the court may order the other parent to pay such amount for or towards the funeral expenses of the child as it thinks reasonable.

(2)

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(2) Where a parent of a child might, but for that parent's death, have made a complaint under subsection one of this section, the complaint may be made by any person who has paid or is liable to pay the funeral expenses of the child.

(3) Where the court, upon complaint made by or on behalf of the mother of an illegitimate child, is satisfied that the child was stillborn or died before attaining the age of sixteen years and that the defendant—

(a) was the father of the child or had been adjudged to be the father of the child in any other legal proceedings; and

(b) has not made adequate provision for the funeral expenses of the child,

the court may order him to pay such amount for or towards the funeral expenses of the child as it thinks reasonable.

(4) Where the mother of an illegitimate child or of an illegitimate stillborn child has died, a complaint under subsection three of this section may be made by any person who has paid or is liable to pay the funeral expenses of the child.

(5) An order shall not be made under subsection three of this section in relation to a stillborn child unless the court is satisfied that the child quickened.

(6) An order shall not be made under this section upon a complaint made more than twelve months after the stillbirth or the death of the child to whom it relates.

(7) An order shall not be made under subsection one of this section in respect of the funeral expenses of a child whose death occurred before the commencement of this section.

20. (1) Where the court, upon complaint made by any person, is satisfied—

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Court may make order against father for funeral expenses of mother of illegitimate child.

- (a) that the defendant is the father of an illegitimate child (including a child that quickened but was stillborn) or has been so adjudged in any other legal proceedings;
- (b) that the mother of the child died during and in consequence of her pregnancy or in consequence of the birth or stillbirth of the child; and
- (c) that the defendant has not made adequate provision for the funeral expenses of the mother,

the court may order him to pay for or towards the funeral expenses of the mother such amount as it thinks reasonable.

(2) An order shall not be made under this section upon a complaint made more than twelve months after the death of the mother.

21. (1) Where the court upon complaint made by or on behalf of—

Court may make further order for payment of medical and like expenses.

- (a) a person for whose maintenance an order (not being an order for preliminary expenses) has taken effect and is in force under this Part; or
- (b) a person in respect of whom there has been made an order under section twenty-three of this Act that is in force under this Part,

is satisfied—

- (c) that any medical, surgical, psychiatric, dental, hospital or nursing care or treatment is or was reasonably required to be rendered in respect of that person;
- (d) that the amount ordered to be paid for the maintenance of that person is not sufficient to enable adequate provision to be made thereout for or towards the cost of that care or treatment; and

(e)

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- (e) that the person against whom the order was made has not made adequate provision for or towards that cost and it is just and equitable in all the circumstances of the case that he pay or contribute towards that cost,

the court may order him to pay for or towards that cost such amount as it thinks reasonable.

(2) Where the court upon complaint made on behalf of a child in respect of whom an order for preliminary expenses has been made is satisfied—

- (a) that any treatment referred to in paragraph (c) of subsection one of this section—
- (i) where the child has not attained the age of three months, is reasonably required to be rendered in respect of that child; or
 - (ii) where the child has attained that age, was reasonably required, and was, in fact, rendered in respect of that child before he attained that age;
- (b) that the amount ordered to be paid for preliminary expenses was not sufficient to enable adequate provision to be made thereout for or towards the cost of that care or treatment; and
- (c) the person against whom the order was made has not made adequate provision for or towards that cost and it is just and equitable in all the circumstances of the case that he pay or contribute towards that cost,

the court may order him to pay for or towards that cost such amount as it thinks reasonable.

(3) Where an order is made under this section for the payment of moneys for or towards the cost of any care or treatment referred to in paragraph (c) of subsection one of this section the court or a justice may, at any time, give such directions in writing as the court or justice thinks proper for the disbursement of the amount ordered to be paid but so that no moneys are disbursed before the care or treatment to which the payment relates has been rendered.

(4)

(4) The adoption of a child does not prevent the making of an order under this section in the same manner as if the child had not been adopted and does not affect the validity or operation of any such order in respect of the child. No. 74, 1964

(5) Where complaint might have been made under this section by or on behalf of a person but for that person's death, the complaint may be made by any person who has paid or is liable to pay the cost of any treatment referred to in paragraph (c) of subsection one of this section.

(6) An order shall not be made under this section in respect of the cost of any care or treatment that was rendered before the commencement of this section.

DIVISION 2.—*Ancillary Orders.*

22. (1) Subject to this section, upon application made by or on behalf of a parent of a child of the family, the court may commit the legal custody of the child to that parent alone until the child attains the age of sixteen years.

Order for custody of child where maintenance order in force against parent.

(2) The court may, by the same or a subsequent order, make such provision as it thinks fit with respect to the access to the child of the other parent during the currency of the order.

(3) An order under this section committing the legal custody of a child to a parent of the child shall not be made unless an order for the maintenance of the child is in force and the payments under the order are ordered or directed to be made to that parent.

(4) Notwithstanding the provisions of subsection three of this section, where—

- (a) a complaint under section eleven or fourteen of this Act for the maintenance of a parent of a child of the family has been made by or on behalf of that parent against the other parent of that child;
- (b) there has been included in the form of complaint a statement that the complainant intends to seek, at the hearing of the complaint, an order committing the

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—

the legal custody of the child to him and that he also intends to apply for an order for the maintenance of the child; and

- (c) notice of the application and statement referred to in paragraph (b) of this subsection has been included in the summons or warrant issued in the first instance, as the case may be,

the court may, if it makes an order for maintenance upon the complaint referred to in paragraph (a) of this subsection, make in addition both of the following orders, that is to say—

- (d) an order committing the legal custody of the child to the complainant; and
- (e) an order requiring that other parent to pay for or towards the maintenance of the child such amount as it thinks reasonable.

(5) An order under this section committing the legal custody of a child to a parent shall not be made where the Minister under the Child Welfare Act, 1939, as amended by subsequent Acts, is the guardian of the child under that Act, as so amended, or where there is in force an order for the custody of that child made by the Supreme Court of New South Wales or of any State or Territory of the Commonwealth, whether acting under the law of New South Wales or any other State or the Commonwealth or a Territory of the Commonwealth.

(6) Where an order for the maintenance of a child in respect of whom an order under this section has been made is discharged, the order under this section ceases to have effect.

Nominal orders.

23. (1) Where upon the hearing of a complaint under this Part for the maintenance of a person the court is satisfied that it would make an order for the maintenance of that person but for the fact—

- (a) that that person is not presently left without adequate means of support; or

(b)

(b) that the defendant is not presently able to contribute No. 74, 1964
to the support of that person,

the court may nevertheless make an order setting out its findings on the complaint and directing the payment by the defendant of a merely nominal amount in respect of that person.

(2) Proceedings shall not be taken under this Act to enforce payment of the nominal amount directed to be paid by an order, but, if that amount is varied under section thirty-five of this Act, proceedings may be taken to enforce payment of any amount payable under the order as varied.

24. (1) At any time after the making of a complaint under section twelve or thirteen of this Act for the maintenance of a child of the family and before the hearing of the complaint has commenced, a special magistrate or any two justices may, upon an affidavit made by the complainant relating to such matters as the magistrate or justices may require, order the defendant to pay for the maintenance of the child such amount (being not more than two pounds per week) as the magistrate or justices may think reasonable until the expiration of three months from the making of the order or until the making or refusal of an order for the maintenance of the child under this Part, whichever first occurs.

Ex parte
order for
preliminary
maintenance
of child.

(2) An order may be made under this section without prior notice being given to the defendant and shall not be subject to suspension, variation or appeal.

25. (1) Where the hearing of a complaint made for the purpose of obtaining an order for the maintenance of a wife, husband or child of the family is adjourned for a period of not less than seven days (whether or not the hearing has previously been so adjourned) the court may order the defendant to pay for or towards the maintenance of the wife, husband or child such amount as it thinks reasonable.

Interim
orders for
payment of
maintenance.

(2)

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— (2) An order under this section shall remain in force until the expiration of a period of three months from the date on which the order is made or until the complaint again comes before the court, whichever first occurs.

DIVISION 3.—*General.*

Orders for
maintenance
or custody
of children.

26. Subject to this Act—

- (a) an order shall not be made under this Part in respect of a child who has attained the age of sixteen years; and
- (b) an order for the maintenance or custody of a child ceases to have effect when the child attains the age of sixteen years, dies or is adopted or the person against whom the order was made dies, whichever first occurs.

Extension
of
maintenance
order after
child's
sixteenth
year.

27. (1) This section applies to any child for whose maintenance an order (in this section referred to as a "maintenance order") is or, at the time the child attained the age of sixteen years, was in force under this Act, the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts.

(2) Where upon application made to a court by or on behalf of a child to whom this section applies it appears to the court that, in the case of a child who has not attained the age of sixteen years, the child will be engaged in a course of education or training after he attains that age or, in the case of a child who has attained that age, the child is or will be so engaged, and that the maintenance order made in respect of the child should be continued or revived, as the case may require, with or without variation, for the purpose of making provision for or towards the maintenance of the child while he is so engaged and of meeting the expenses of the course, the court may order —

- (a) where the child has not attained the age of sixteen years—that the maintenance order continue and be in force for such amount and for such period
not

not exceeding two years from the date on which he attains that age as may be specified in the order under this section; or

- (b) where the child has attained the age of sixteen years —that the maintenance order revive on and from a date to be specified in the order made under this section (not being a date earlier than the date on which the order is made) and that the maintenance order thereafter be in force for such amount and for such period not exceeding two years from the date so specified as may be specified in the order so made.

(3) A court may, from time to time, by a subsequent order under this section, extend the period specified in any previous order so made for such further period not exceeding two years from the date of expiry of the previous order as may be specified in the subsequent order.

(4) An order under this section shall not require payments to be made under a maintenance order after the date on which the child concerned attains the age of twenty-one years.

(5) An application under this section shall be heard by the court for the place where the maintenance order was made unless—

- (a) the parties to the application consent to the hearing of the application by a court sitting at another place; or
- (b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

28. Subject to this Part, an order under this Part for the maintenance of a person may, whether or not an application in that behalf has been made, be made to take effect from a past date, not being earlier than three months before the date on which the order is made, and where an order takes effect from a past date the court may direct the past maintenance to be paid in one sum or by such instalments as the court directs.

Orders for maintenance may include limited provision for past maintenance.

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Duration
of order
for support
of wife or
husband.

29. An order under this Part for the maintenance of a wife or husband ceases to have effect, if not earlier discharged or terminated, upon the death of the wife or husband, whichever death first occurs.

Recovery
of arrears
after
cessation
of order.

30. (1) The fact that an order under this Act for the maintenance of a person ceases to have effect by virtue of this Act does not prevent the enforcement of the order so far as it relates to any period before it ceased to have effect.

(2) Subsection one of this section does not apply where the order ceases to have effect by reason of the death of a person.

Offer to
provide
home.

31. Where—

- (a) the conduct of a party to a marriage constitutes just cause or excuse for the spouse of that party to live separately or apart and—
 - (i) occasions the spouse to live separately or apart; or
 - (ii) occasions the spouse to live separately or apart and to take a child of the family from the matrimonial home; or
- (b) the conduct of a parent constitutes just cause or excuse for a child of the family to live separately or apart and occasions the child to live separately or apart,

a bona fide offer by that party or parent to provide a home for the spouse or child, as the case may be, is not of itself a sufficient answer to a complaint under this Part for the maintenance of the spouse or child, or a sufficient reason for the discharge, suspension or variation of an order under this Part for the maintenance of the spouse or child.

32.

32. Where it is necessary for the purpose of obtaining an order under this Part to satisfy the court that the defendant is the father of an illegitimate child, the order shall not be made—

Order relating to illegitimate child not to be made in certain cases.

- (a) upon the evidence of the mother of the child, unless her evidence is corroborated in some material particular; or
- (b) if the court is satisfied that at the time the child was conceived the mother was a common prostitute,

33. A wife and her husband are competent and compellable witnesses in any proceedings under this Part, and any evidence given by a wife or husband in those proceedings may be used in any court—

Wives and husbands as competent and compellable witnesses.

- (a) in proceedings to which the wife and husband are parties and in which they are competent and compellable witnesses; and
- (b) in proceedings for perjury committed in the course of giving that evidence.

34. (1) Where it is necessary for the purpose of obtaining an order under this Part to prove a marriage, the order shall not be made unless—

Proof of marriage, etc.

- (a) direct evidence of the marriage is produced to the court; or
- (b) evidence on oath is given of the time, place and circumstances of the marriage.

(2) In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in New South Wales or elsewhere.

DIVISION

No. 74, 1964 DIVISION 4.—*Discharge, Suspension, Variation and Annulment of Orders.*

Court may discharge, suspend or vary order.

35. (1) Upon application made by or on behalf of a party to an order (including an order as varied) made under this Part a court may, subject to this Division, at any time make an order discharging the order, or suspending the order in whole or in part until a specified day or until further order, or varying the order in any specified particular.

(2) An application under subsection one of this section shall be heard by the court for the place where the order the subject of the application was made unless—

- (a) the parties to the application consent to the hearing of the application by a court sitting at another place; or
- (b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

(3) An order shall not be discharged, suspended or varied under this Division unless the court is satisfied—

- (a) that the order or, if the order has been varied, the original order or any order varying the original order was obtained by fraud or upon the basis of the existence of a marriage that did not in fact exist;
- (b) that new facts or circumstances have arisen that have not previously been disclosed to a court and that by reason of those facts or circumstances it is reasonable to discharge, suspend or vary the order; or
- (c) that facts or circumstances were in existence at the time of the making of the order or, if the order has been varied, the original order or any order varying the original order, that have not previously been disclosed to a court and that were not and could not by the exercise of reasonable diligence have previously been known to the party presently seeking the discharge, suspension or variation of the order,
and

and that by reason of those facts or circumstances No. 74, 1964
it is reasonable to discharge, suspend or vary the
order.

(4) An order—

(a) that is in force under this Part may be—

(i) discharged, suspended or varied as from
any past or future day;

(ii) suspended in respect of any past or future
period; or

(b) that has ceased to have effect, may be discharged,
suspended or varied from any past day or suspended
in respect of any past period,

specified in the order which effects the discharge, suspension
or variation.

(5) The fact that the defendant is in default in com-
plying with an order shall not preclude the discharge,
suspension or variation of that order.

(6) The clerk of the court to which any application
is made under subsection one of this section shall forward
notice of the application to the Director of the Child Welfare
Department.

36. (1) Where an order made under this Part is sus-
pended until a specified day the order, unless earlier revived
pursuant to section thirty-seven of this Act, shall without any
further or other order revive and again take effect upon the
specified day.

Effect of
suspension
of order.

(2) Where an order is suspended until further order
it shall not again take effect unless and until an order reviving
it is made under section thirty-seven of this Act.

(3) Subject to subsection four of this section, the fact
that an order is suspended shall not prevent the enforcement
of the order so far as it relates to any period before the day
as from which the suspension took or takes effect.

(4)

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(4) Where an order is suspended, the court may order that the whole or any part of any moneys owing under the order as at the day from which the suspension took or takes effect shall not be recoverable under this Act during the period of the suspension, and no certificate in relation to those moneys shall be granted under section forty-five of this Act during that period.

Court may
revive
suspended
order.

37. (1) Upon application made by or on behalf of any person for whose benefit an order was made under this Part that has been suspended under this Division until a specified day or until further order, a court may make an order reviving the suspended order in whole or in part with or without variation, as it thinks fit.

(2) An application under subsection one of this section shall be heard at the place where the suspending order was made unless—

- (a) the parties to the application consent to the hearing of the application by a court sitting at another place; or
- (b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.

(3) A suspended order may be revived from any past day or any future day specified in the reviving order and shall from that day have and, where necessary, be deemed to have had effect accordingly.

(4) Where the court revives an order from a past day, it may direct that payment in respect of any period before the date of the reviving order be made in one sum or by such instalments as the court specifies in the reviving order.

Applica-
tions for
annulment
orders.

38. (1) Where—

- (a) an order has been made under this Part; and
- (b) it was necessary to satisfy the court making the order that the defendant was the father of an illegitimate child,

the defendant may at any time make an ex parte application to a special magistrate for the annulment of the order.

(2)

(2) If evidence is given to the court on oath, either No. 74, 1964 orally or on affidavit—

- (a) showing that evidence material to the question of the paternity of the child is available and that the evidence was not produced at the time the order was made; and
- (b) disclosing the nature of that evidence and the names and addresses of the witnesses who are to be called to give the evidence.

the magistrate shall, upon such terms as he thinks fit, issue a notice directed to all persons (other than the child) to be affected thereby, calling upon them to show cause why the order should not be annulled.

(3) Where the person to whom any such notice is directed is living elsewhere than in New South Wales the magistrate shall state a time for the hearing which will allow that person to attend, regard being had to the distance of the place of residence of that person from the place fixed for the hearing.

39. (1) An application under section thirty-eight of this Act shall be heard and determined by the court for the place where the order the subject of the application was made unless—

Making of
annulment
orders.

- (a) the applicant and every person to whom a notice referred to in subsection two of that section is directed consent to the hearing of the application by a court sitting at another place; or
- (b) the hearing of the application is adjourned, upon the application of the applicant or any such person, to a court sitting at another place.

(2) The court shall entertain an application to annul an order notwithstanding that the applicant is in default in complying therewith.

(3) The court shall receive and consider the evidence recorded at the original hearing or on appeal as well as the fresh evidence submitted.

(4)

No. 74, 1964. (4) If at the conclusion of the evidence in chief submitted by the applicant no fresh evidence material to the question of paternity has been submitted, the application shall be dismissed.

(5) At the hearing the onus is upon the applicant to prove that he is not the father of the child.

(6) If the court finds that the applicant is not the father of the child, it shall so declare and annul the order but otherwise the application shall be dismissed.

(7) If the order is annulled the defendant is released from payment of any amount due and unpaid under the order, but is not entitled to recover from any person any amount paid under and by virtue of the order.

(8) If the order is annulled the annulment does not, except as provided in subsection seven of this section, affect the previous operation of the order or anything duly suffered or done thereunder.

**Plural
births.**

40. Where an order under section eighteen of this Act for the maintenance of an illegitimate child is made before the birth of the child and two or more children are born, an application may be made under this Division for variation of the order to provide for the maintenance of the additional child or children.

PART III.

ENFORCEMENT OF ORDERS MADE IN NEW SOUTH WALES.

DIVISION 1.—*Enforcement by Imprisonment, Registration of Certificate of Arrears, Recognizances, or Sale of Goods.*

**References
to orders.**

41. In this Division a reference to an order includes a reference to an order as varied from time to time.

42.

42. (1) Where, upon complaint made by or on behalf of a person for whose benefit an order (in this section referred to as a "maintenance order") has been made under Part II of this Act for the payment of moneys, whether in one sum, by instalments or by periodical payments or has been made for costs, the court is satisfied—

Imprisonment of defendant for disobedience of order for payment of moneys.

- (a) that the defendant, being a male person, has disobeyed or failed to comply with the order; and
- (b) that a sum of money (in this section referred to as "arrears") due under the order is unpaid,

the court may order that, unless the order is complied with, the defendant be committed to prison for a period of one day for every pound due under the order and unpaid or due and unpaid in respect of costs payable by the defendant in respect of the proceedings against him under this section.

(2) Notwithstanding that a person has, by an order made in accordance with subsection one of this section, been committed to prison for a longer period, he shall not be detained in prison for a period of more than twelve months.

(3) The period of detention in prison of any such person shall be subject to the provisions of section ninety-four of the Justices Act, 1902, as amended by subsequent Acts.

(4) A defendant is not liable to serve a period of imprisonment in respect of his failure to pay any arrears if he has previously served a period of imprisonment in respect of his failure to pay those arrears.

(5) A defendant is liable to pay any arrears (other than arrears due under an order made under section nineteen, twenty or twenty-one of this Act) notwithstanding that he has served a period of imprisonment in respect of his failure to pay those arrears and those arrears may be recovered under any other law.

(6) Where it appears that any arrears referred to in a complaint made under subsection one of this section have been paid after the service of the summons or the issue of a warrant in connection with proceedings under this section for the recovery of those arrears and before the execution of the warrant committing the defendant to prison, the court may order

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No. 74, 1964 order the person summoned or apprehended to pay the costs of and incidental to the proceedings and those costs may be recovered in a summary way under the Justices Act, 1902, as amended by subsequent Acts.

(7) One complaint may be made under subsection one of this section in respect of two or more maintenance orders if—

- (a) the complainant is entitled to receive the payments under each of the maintenance orders; and
- (b) the person against whom the complaint under subsection one of this section is made was the defendant against whom the maintenance orders were made.

(8) Where one complaint is made as referred to in subsection seven of this section, the court shall, in determining the period for which the defendant shall be committed to prison, have regard to the total amount due in respect of both or all the maintenance orders in respect of which the complaint under subsection one of this section was made, and may make an order under that subsection accordingly.

Court not to commit to prison in certain cases.

43. (1) A court shall not commit a defendant to prison under section forty-two of this Act if it is satisfied—

- (a) that the defendant has not, and has not had, the means and ability, and could not by reasonable effort have had the means and ability, to comply with the order under which the moneys are due and unpaid; or
- (b) that for any other reason the order should not be enforced by imprisonment.

(2) Where the court that is committing a defendant to prison under section forty-two of this Act for the non-payment of a sum is aware that a court has previously refused to commit the defendant to prison under that section for non-payment of a sum (in this section referred to as the "original sum") included in that sum, the court shall only have regard to the amount by which the sum still due and
unpaid

unpaid exceeds the original sum, unless it is satisfied that since that refusal the means and ability of the defendant to pay the original sum have so altered as to make it reasonable for him to be committed to prison for non-payment of the original sum. **No. 74, 1964**

44. (1) The court may, upon the making of a commitment order pursuant to section forty-two of this Act, or a justice may, at any time thereafter, upon such conditions as it or he thinks fit—

Provision for postponement of issue of warrant of commitment.

- (a) postpone the issue or execution of the warrant of commitment for any period;
- (b) order that the warrant of commitment be issued or executed for such part of the amount found to be due and unpaid and any costs awarded to be paid as is specified in the order; or
- (c) order the amount found to be due and unpaid and any costs awarded to be paid by instalments,

and if the defendant fails to comply with any such condition or to pay any instalment ordered to be paid a justice may direct the issue or execution of the warrant.

(2) Where, before a justice directs under subsection one of this section the execution of a warrant committing a person to prison, it appears to the justice that, by payment of part of the arrears for the non-payment of which that person has been so committed, those arrears have been reduced to such an extent that the unsatisfied balance, if it had constituted those arrears, would have subjected that person to a maximum period of imprisonment less than the period of imprisonment which he is liable to serve under the warrant, the justice shall, by the warrant of commitment, revoke the period of imprisonment and order that person to be committed to prison for a period calculated in accordance with subsection one of section forty-two of this Act, having regard to the unsatisfied balance, instead of for the period originally mentioned in the warrant.

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Filing of
certificate
of arrears
in the
Supreme
Court,
District
Court or
Small Debts
Court.

45. (1) Where an order (in this section referred to as a "maintenance order") has been made under section eleven, twelve, thirteen, fourteen, fifteen, sixteen or eighteen, or subsection four of section twenty-two, of this Act, and it is made to appear upon oath to a special magistrate that a sum of money due under the order is unpaid, the magistrate may, upon ex parte application made by or on behalf of the person for whose benefit the order was made and subject to subsection four of section thirty-six of this Act, grant a certificate in the prescribed form stating the amount due under the maintenance order at the date of the certificate.

(2) The person for whose benefit the maintenance order was made may file the certificate or cause the certificate to be filed in the Supreme Court of New South Wales, in a District Court for the district in which the defendant resides or in which any real property of the defendant is situated or in a court of petty sessions within the meaning of the Small Debts Recovery Act, 1912, as amended by subsequent Acts, for the petty sessions district in which the defendant resides, irrespective of the amount stated in the certificate to be due under the maintenance order.

(3) Where a certificate is filed in accordance with subsection two of this section, the Prothonotary, the Registrar of the District Court, or the Registrar of the court of petty sessions, as the case may be, shall enter judgment for the person to whom the certificate was granted for the amount stated to be due in the certificate, together with the fees paid for the certificate and for filing it and entering the judgment and shall forthwith send notice in writing of the entry of such judgment to the clerk of the court at the place where payments under the maintenance order are for the time being required to be made.

(4) Where judgment is entered under this section proceedings for its enforcement shall not be commenced unless an affidavit has been filed stating that no proceedings are pending in another court for the recovery of any of the arrears of maintenance included in the amount of the judgment and that the maintenance order has not been discharged, suspended or varied since the date of the certificate to which

the

the judgment relates in such a way as to affect any of the arrears of maintenance included in the amount of the judgment. No. 74, 1964.

(5) One application may be made under subsection one of this section in respect of two or more maintenance orders if—

- (a) the applicant is entitled to receive the payments under each of the maintenance orders; and
- (b) the defendant in the proceedings in which those orders were made was the same person.

(6) Where one application is made in accordance with subsection five of this section one certificate may be granted in respect of the total amount due under all of the maintenance orders in respect of which the application was made.

(7) Rules of court may prescribe the practice and procedure in the Supreme Court of New South Wales and in district courts to be observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid.

46. (1) Where an order (in this section referred to as a "maintenance order") has been made under section eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen or eighteen, or subsection four of section twenty-two, of this Act, a court may—

- (a) at the time of the making of the maintenance order; or
- (b) at any time, and from time to time, while the maintenance order is in force upon complaint made by or on behalf of the person for whose benefit the maintenance order was made;

order the defendant to enter into a recognizance with or without sureties to the satisfaction of a justice for the due performance of his obligations under the maintenance order for a specified period, not exceeding twelve months at any one time.

(2)

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(2) An order shall not be made under this section unless the court is satisfied—

- (a) that the defendant has persistently failed to comply with the requirements of the maintenance order; or
- (b) that he has by his conduct indicated an intention to make default in complying with the requirements of the maintenance order.

(3) Upon the making of an order under this section the court may, if the defendant does not immediately enter into the required recognizance with the required sureties, commit the defendant to prison there to remain until—

- (a) the expiration of the term, not exceeding twelve months, specified by the court;
- (b) he enters into the required recognizance; or
- (c) he performs his obligations under the maintenance order in respect of the period referred to in subsection one of this section,

whichever first happens.

(4) Where the defendant fails to comply with his obligations under any recognizance entered into under this subdivision the recognizance may in respect of the defendant and any surety or sureties or any of them be forfeited and estreated by any court of petty sessions consisting of a stipendiary magistrate sitting alone, and any moneys arising from the estreatal of any such recognizance shall be applied for or towards the payment of maintenance due or becoming due under the maintenance order.

Orders for the seizure of goods, chattels, securities, rents, etc.

47. (1) Upon the making or during the operation of an order for the payment of moneys made under Part II of this Act a court may, upon ex parte application made by or on behalf of the person for whose benefit the order was made, by order authorise and direct a person named in the order during the operation of the order and from time to time, if necessary, to seize and sell, to the extent necessary to satisfy the order, any goods, chattels and securities belonging to the defendant or to demand and receive, to that extent, any annuity,

annuity, rents and other income (not being earnings within the meaning of section forty-eight of this Act) payable to the defendant or any moneys credited to the defendant in any bank account or like account, and to apply the proceeds of any such sale or any moneys so received, after deducting therefrom his costs and charges towards the payment of the amounts required to be paid under the order. No. 74, 1964

(2) Any person so authorised and directed shall have full power and authority to do all acts and things, including the execution of transfers, receipts, discharges and acquittances, necessary to give full effect to the seizures, sales, demands and receipts so authorised and directed.

(3) Any person who fails to comply with the demand made upon him under subsection one of this section by a person authorised and directed in that behalf by a court is guilty of an offence and liable to a penalty not exceeding one hundred pounds.

(4) One application may be made under subsection one of this section in respect of two or more maintenance orders if—

- (a) the applicant is entitled to receive the payments under each of the maintenance orders; and
- (b) the defendant in the proceedings in which those orders were made was the same person.

(5) Where one application is made in accordance with subsection four of this section one order may be made under subsection one of this section in respect of all the maintenance orders in respect of which the application was made.

DIVISION 2.—Enforcement by Attachment of Earnings.

48. (1) In this Division unless inconsistent with the con- Interpre-
text or subject-matter— tation.

“Attachment of earnings order” means an order under subsection three of section forty-nine of this Act or such an order as varied from time to time.

“Defendant”

No. 74, 1964

“Defendant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person against whom the order was made.

“Earnings”, in relation to a defendant, means any sums payable to the defendant—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or
- (b) by way of pension, including—
 - (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in respect of or by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment,

but does not include any pension payable to the defendant under the Social Services Consolidation Act 1947, as amended by subsequent Acts, the Australian Soldiers' Repatriation Act 1920, as amended by subsequent Acts, or the Seamen's War Pensions and Allowances Act 1940, as amended by subsequent Acts, of the Commonwealth.

“Employer”, in relation to a defendant, means a person (including the Crown in right of the State, a Minister of the Crown in right of the State, and any statutory authority representing the Crown in right of the State) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant.

“Maintenance

“Maintenance order” means an order made under section ~~No. 74, 1954~~
eleven, twelve, thirteen, fourteen, fifteen, sixteen
or eighteen or subsection four of section twenty-
two, of this Act or enforceable as if so made and,
if such an order has been varied, means the order
as so varied and includes—

- (a) such an order that has ceased to have effect if any arrears are recoverable under the order; and
- (b) an order for the payment of costs in any proceedings in which an order under any of those sections was made.

“Net earnings”, in relation to a pay-day, means the amount of the earnings becoming payable by a particular employer on that pay-day, after deduction from those earnings of—

- (a) any sum deducted from those earnings under Division 2 of Part VI of the Income Tax and Social Services Contribution Assessment Act 1936, as amended by subsequent Acts, of the Commonwealth; and
- (b) any sum deducted from those earnings that would be an allowable deduction—
 - (i) under section 82H of that Act, as so amended, other than life insurance premiums, not being life insurance premiums payable in respect of superannuation; or
 - (ii) under section 82HA of that Act, as so amended.

“Normal deduction”, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant’s employer.

“Pay-day”

No. 74, 1964

“Pay-day” means an occasion on which earnings to which an attachment of earnings order relates become payable.

“Protected earnings”, in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and either the last preceding pay-day, or, where there is no last preceding pay-day, the date on which the employer became, or last became, the defendant’s employer.

(2) In this Division—

- (a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order either directly or through another person or for transmission to another person; and
- (b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made.

Application
for attach-
ment of
earnings
order.

49. (1) A person entitled to receive payments under a maintenance order may apply in writing—

- (a) where the name of an employer is specified in the application, to the court for the area in which the employer’s place of abode or business is situated;
or
- (b) where the name of an employer is not so specified, to the court for the place where payments under the order are required by the order to be made,

for an attachment of earnings order.

(2) An application under subsection one of this section may be made ex parte and without specifying the name of any particular employer.

(3)

(3) If the court is satisfied that the defendant is a No. 74, 1964 person to whom earnings are payable or are likely to become payable and—

- (a) that, at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than—
 - (i) in the case of an order for weekly payments—four payments; or
 - (ii) in any other case—two payments; or
- (b) that the defendant has persistently failed to comply with the requirements of the order,

the court may order a person who appears to the court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of those earnings or that part of those earnings payments in accordance with section fifty of this Act.

(4) The court shall not make an attachment of earnings order if it appears to the court, in a case to which paragraph (a) of subsection three of this section applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(5) An attachment of earnings order shall specify either generally or in relation to any particular pay-day or pay-days the normal deduction rate, that is to say, the rate at which the court considers it to be reasonable that the earnings to which the order relates should be applied in satisfying the requirements of the maintenance order but not exceeding the rate that appears to the court to be necessary for the purpose of—

- (a) securing payment of the sums from time to time falling due under the maintenance order; and
- (b) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order that are payable by the defendant.

(6)

Maintenance Act.

No. 74, 1964

(6) An attachment of earnings order may specify a higher normal deduction rate to apply for a specified number of pay-days after the order comes into force and a lower normal deduction rate to apply to subsequent pay-days.

(7) An attachment of earnings order shall also specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the court considers it to be reasonable that the earnings to which the order relates should not be reduced by a payment under the order.

(8) An attachment of earnings order shall provide that payments under the order are to be made to the clerk of the court specified in the order.

(9) An attachment of earnings order shall contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.

(10) An attachment of earnings order shall be served on—

- (a) the defendant; and
- (b) the person to whom the attachment of earnings order is directed,

and shall not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

Employer
to make
payments
under order.

50. (1) An employer to whom an attachment of earnings order is directed, being an attachment of earnings order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of—

- (a) the protected earnings of the defendant; and
- (b) so much of any amount by which the net earnings that became payable on any previous pay-day were less than the protected earnings in relation to that pay-day as has not been made good on any other previous pay-day,

pay,

pay, so far as that excess permits, to the clerk of the court No. 74, 1964 specified in the order—

- (c) the normal deduction in relation to that pay-day; and
- (d) so much of the normal deduction in relation to any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

(2) A payment made by the employer under subsection one of this section is a valid discharge to him as against the defendant to the extent of the amount paid.

51. (1) Where any proceedings are brought in a court to enforce a maintenance order the court may, instead of making any other order, make an attachment of earnings order.

Court may make attachment of earnings order instead of other order.

(2) Unless the court otherwise orders where an attachment of earnings order is in force, no warrant or other process shall be issued or order made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

52. (1) The court by which an attachment of earnings order has been made may, on the application of the defendant or a person entitled to receive payments under the maintenance order, make an order discharging, suspending or varying the attachment of earnings order.

Discharge or variation of order.

(2) An order suspending or varying an attachment of earnings order shall be served on—

- (a) the respondent to the application; and
- (b) the person to whom the attachment of earnings order is directed,

and shall not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

53.

No. 74, 1964 **53.** (1) An attachment of earnings order shall cease to have effect—
 Cessation of attachment of earnings order.

- (a) upon being discharged under section fifty-two of this Act;
- (b) subject to subsection two of this section, upon the discharge or variation of the maintenance order in relation to which the attachment of earnings order was made; or
- (c) unless the court otherwise orders, upon the making of any other order for the enforcement of the maintenance order in relation to which the attachment of earnings order was made.

(2) Where it appears to the court discharging a maintenance order that arrears under the order will remain to be recovered under the order, the court may direct that the attachment of earnings order shall not cease to have effect until those arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect the clerk of the court by which the order was made shall forthwith give notice accordingly to the person to whom the order was directed and, where the maintenance order in respect of which the attachment of earnings order was made is an order of another court, to the clerk of that other court.

(4) Where an attachment of earnings order ceases to have effect the person to whom the attachment of earnings order is directed shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by subsection three of this section or a copy of the discharging order, as the case may be, is served on him.

Compliance with order. **54.** A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other law, but subject to this Division, comply with the order.

55. (1) Where on any occasion on which earnings become payable to a defendant there are in force in relation to those earnings two or more orders, one or more of which is an attachment of earnings order and the other or others of which is an order or are orders of the like nature, the person to whom the orders are directed—

No. 74, 1964
Where two
or more
orders
are in force.

- (a) shall comply with those orders according to the respective dates on which they took effect and shall disregard any order until an earlier order has been complied with; and
- (b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after the making of any payment under any earlier order.

(2) For the purposes of this section an attachment of earnings order which has been varied shall be deemed to have been made as so varied on the day on which the attachment of earnings order was made.

56. (1) A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice specifying particulars of the payment.

Notices to
be given.

(2) Where a person on whom an attachment of earnings order that is directed to him is served—

- (a) is not the defendant's employer at the time when the order is served on that person; or
- (b) is the defendant's employer at that time but ceases to be the defendant's employer at any time thereafter,

that person shall give notice in writing accordingly to the clerk of the court that made the order, and shall give that notice—

- (c) where paragraph (a) of this subsection applies, forthwith after service on that person of the order; and
- (d) where paragraph (b) of this subsection applies, forthwith after that person ceases to be the defendant's employer.

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Determina-
tion as to
what pay-
ments are
earnings.

57. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed, determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purpose of that order.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection one of this section does not incur any liability for failing to comply with the order with respect to any payments of the class or description specified in the application that are made by him to the defendant while the application, or any appeal from a determination made on the application, is pending.

(3) Subsection two of this section does not apply in respect of any payment made after the application has been withdrawn or an appeal from a determination made on the application has been abandoned.

Service.

58. Any order or document that is required or permitted to be served on a person under this Division may be served on that person—

- (a) by delivering a copy thereof to that person;
- (b) by leaving a copy thereof at the usual or last known place of residence or business of that person with some person who apparently resides therein or is employed thereat and is apparently over the age of sixteen years; or
- (c) by sending a copy thereof to him at his usual or last known place of residence or business by certified mail.

Offence.

59. (1) A person who fails to comply with a requirement of this Division or of any attachment of earnings order under this Division that is applicable to him is guilty of an offence and liable to a penalty not exceeding one hundred pounds.

(2) It is a sufficient defence to a person charged with an offence arising under subsection one of this section if he proves that he took all reasonable steps to comply with the requirement or order.

60. (1) Any person who dismisses an employee or injures him in his employment, or alters his position to his prejudice, by reason of the circumstance that an attachment of earnings order has been made in relation to the employee or that the person is required to make payments under such an order in relation to the employee is guilty of an offence and liable to a penalty not exceeding one hundred pounds.

No. 74, 1964
Dismissing an employee, etc. by reason of the making of an attachment of earnings order.

(2) In any proceedings for an offence arising under subsection one of this section, if all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden lies upon that person to prove that he was not actuated by the reason alleged in the charge.

61. (1) Where any person is convicted of an offence arising under subsection one of section sixty of this Act the court by which he is convicted may order that the employee be reimbursed any wages lost by him and may also direct that the employee be reinstated in his old position or in a similar position.

Reimbursement of wages and reinstatement.

(2) Any amount ordered to be reimbursed under subsection one of this section may be recovered from the person convicted as aforesaid as if it were part of the penalty to which such person is liable under subsection one of section sixty of this Act.

62. This Division shall have effect in relation to a defendant notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attached.

Application of Division.

63. The provisions of this Division shall have effect in relation to deductions from earnings falling to be paid by the Crown in right of the State, a Minister of the Crown in right of the State, or a statutory authority representing the Crown in right of the State, or out of the Consolidated Revenue Fund and those earnings shall be treated as falling to be paid by the

Payments by Crown, etc.

No. 74, 1964 — the permanent head or principal officer of the department, office or other body concerned but the provisions of section fifty-nine or of subsection three of section one hundred and fourteen of this Act do not apply to the permanent head or principal officer.

DIVISION 3.—*General.*

Provision where defendant supported wife, husband or child during any period. **64.** Where proceedings are taken under this Part in respect of a failure to make payments for or towards the maintenance of a person it shall be a sufficient answer to those proceedings so far as relates to the failure to make payments during any period if it is proved that during that period the defendant adequately supported that person.

Penalty for molesting, etc., child in respect of whom order for custody made. **65.** (1) Where an order under section twenty-two of this Act commits the legal custody of a child of the family to the father or mother of the child, any person who molests or interferes with, or attempts to molest or interfere with, the child contrary to the order for custody or, having the care or control of the child, refuses or fails on demand to deliver the child to the person entitled to custody under the order, is guilty of an offence against this section.

(2) Where an order made under section twenty-two of this Act makes provision for access to a child of the family by one of the parties, any person who without just cause or excuse refuses to afford, or prevents, or interferes with, access to that child in accordance with that order, is guilty of an offence against this section.

(3) Where an order made in any other State or a Territory of the Commonwealth under any Act or Ordinance corresponding with this Act commits the legal custody of a child of the family to the father or mother of the child any person who in New South Wales molests or interferes with, or attempts to molest or interfere with, the child contrary to the order for custody or, having the care or control of the child in New South Wales, refuses or fails on demand to deliver the child to the person entitled to custody under the order is guilty of an offence against this section.

(4)

(4) It is a sufficient defence to a prosecution for an offence arising under subsection one or three of this section if the defendant shows that he did not know, and could not reasonably be expected to have known, of the order under section twenty-two of this Act or of the like order made in another State or a Territory of the Commonwealth, as the case may be. No. 74, 1964

(5) Any person guilty of an offence against this section is liable to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding six months.

(6) In addition to or in lieu of suffering any penalty under this section a person who is guilty of an offence against this section may be required forthwith to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit to abide by the provisions of the order and in default of entering into a recognizance as aforesaid that person may be imprisoned for a period not exceeding three months unless the recognizance is sooner entered into.

PART IV.

RECIPROCAL ENFORCEMENT OF ORDERS.

DIVISION 1.—*Interpretation and Administration.*

66. (1) In this Part, unless inconsistent with the context or subject-matter— Interpre-
tation.

“Another Australian State” means an Australian State other than New South Wales.

“Australian State” means a State or Territory of the Commonwealth.

“Certified copy”—

(a) in relation to a maintenance order or other order of a court (not being an order made under the Matrimonial Causes Act 1959 of the Commonwealth)—means a copy of the order certified to be a true copy by an officer

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officer of the court that made the order, or a copy of such a copy certified to be a true copy by an officer of a court in or by which the order has been registered or confirmed or, in the case of an overseas order, by the Under Secretary;

- (b) in relation to a maintenance order or other order made under the Matrimonial Causes Act 1959 of the Commonwealth—means a certificate of the order issued under the rules made under that Act, or a copy of such a certificate certified to be a true copy by an officer of a court in which the order has been registered under that Act; and
- (c) in relation to a record of the evidence of a witness in proceedings before a court—means a copy of the record certified to be a true copy by an officer of that court.

“Collector”—

- (a) in relation to New South Wales—means the Collector of Maintenance, the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Division; and
- (b) in relation to another Australian State—means an officer appointed under the law of that Australian State whose duties, or part of whose duties, are similar to those of the Collector of Maintenance, the Deputy Collector of Maintenance or an Assistant Collector of Maintenance appointed under this Division.

“Collector’s certificate”—

- (a) in relation to a New South Wales order, or an overseas order enforceable in New South Wales—means a certificate in or to the effect of the prescribed form signed by the Collector; and

(b)

(b) in relation to a maintenance order made in another Australian State, or an overseas order that is or has been enforceable in another Australian State—means a certificate in or to the effect of such form prescribed by or under the law of that other Australian State as corresponds with the form of Collector's certificate prescribed for the purposes of this Part.

“Complainant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person for whose benefit the maintenance order was made, or a person acting on behalf of that person.

“Country” includes any State, Province or other part of a country outside Australia, or any Territory of such a country.

“Country having restricted reciprocity” means a reciprocating country that is for the time being declared by a proclamation in force under section ninety-six of this Act to have restricted reciprocity with the State of New South Wales.

“Court”, in relation to any order made or to be made or any act, matter or thing done or to be done in any place outside New South Wales, means a court or magistrate, or a justice or justices, or any other person or persons, exercising judicial powers in that place.

“Defendant”, in relation to a maintenance order or to proceedings in connection with a maintenance order, means the person against whom the order was made.

“Depositions”, in relation to a witness in proceedings, means the record, or a certified copy of the record, of the evidence of that witness in those proceedings.

“Interstate

No. 74, 1964

“Interstate order” means a maintenance order—

- (a) made in another Australian State by a court constituted by a magistrate or justices; or
- (b) made by the Supreme Court of another Australian State (whether under the law of that Australian State or under a law of the Commonwealth) and registered, for the purposes of enforcement, in a court of summary jurisdiction in that Australian State under a law of that Australian State or under a law of the Commonwealth.

“Justice” means, in relation to the exercise or discharge of any power, authority, duty or function, a justice of the peace authorised to exercise or discharge that power, authority, duty or function in accordance with the law of the place where it is exercised or discharged.

“Maintenance order” means an order (whether made before or after the commencement of this Act and whether made in New South Wales or elsewhere), being—

- (a) an order whereby a person is ordered to pay money, whether in a lump sum or by instalments, or to pay sums of money periodically, for or towards the maintenance of another person or by way of recoupment of moneys spent in, or provided for, the maintenance of another person; or
- (b) an order made under, or of a kind similar to an order made under, section seventeen, nineteen, twenty or twenty-one of this Act,

and, if such an order has been varied, means the order as so varied and all orders, wherever made, by which it has been varied and includes an order for the payment of costs in any proceedings in which an order referred to in paragraph (a) or (b) of this definition was made.

“New

“New South Wales order” means a maintenance order— No. 74, 1964

- (a) made in New South Wales by a court, special magistrate or justices; or
- (b) made by the Supreme Court of New South Wales (whether under the law of New South Wales or under a law of the Commonwealth) and registered, for the purposes of enforcement, in a court in New South Wales under a law of New South Wales or under a law of the Commonwealth.

“Officer”, in relation to a court, includes a person, or one of the persons, constituting the court.

“Overseas order”, in relation to a reciprocating country, means—

- (a) in the case where in a proclamation under subsection one or two of section ninety-six of this Act it is declared that maintenance orders made in that country shall be enforceable in New South Wales in accordance with the provisions of Division 3 of this Part as on and from a date specified in the proclamation—a maintenance order made on or after that date in that country by a court of competent jurisdiction; and
- (b) in any other case—a maintenance order made in that country by a court of competent jurisdiction, whether before or after the making of the proclamation.

“Reciprocating country” means a country that is for the time being declared by a proclamation in force under section ninety-six of this Act to be a reciprocating country for the purposes of this Part.

“Under Secretary” means Under Secretary of the Department of Child Welfare and Social Welfare or any person acting as Under Secretary of that Department.

No. 74, 1964

(2) A reference in this Part to a certified copy of an order shall, where the order has been varied or otherwise affected by a provisional order of one court that has effect by virtue of the fact that it has been confirmed (whether with or without modification) by another court, be read as including a reference to both a certified copy of the provisional order and a certified copy of the confirming order.

(3) A reference in this Part to an order made by a court shall be read as including a reference to an order made by another court on an appeal in connection with proceedings that originated in the first-mentioned court.

(4) For the purposes of this Part, where a person is working in a place, whether temporarily or permanently, he shall be deemed to be resident in that place as well as in the place where he is in fact resident.

Collector
of Main-
tenance,
Deputy
Collector
of Main-
tenance,
and
Assistant
Collectors
of Main-
tenance.

67. (1) For the purposes of this Part, the Governor may appoint a Collector of Maintenance, a Deputy Collector of Maintenance and as many Assistant Collectors of Maintenance and other officers as are necessary for the administration of this Part.

(2) The Deputy Collector of Maintenance and every Assistant Collector of Maintenance shall have and may exercise, subject to any directions of the Collector of Maintenance, all the powers, authorities, duties and functions of the Collector of Maintenance.

Powers,
etc., of
Collector.

68. (1) The Collector has power to do all things necessary or convenient to be done for the enforcement in New South Wales of maintenance orders that are enforceable in New South Wales by virtue of this Part.

(2) The Collector shall—

- (a) receive moneys payable to him pursuant to orders enforceable under this Part and moneys remitted to him by Collectors for other Australian States and authorities in reciprocating countries, and give receipts for moneys so received;

(b)

- (b) keep proper accounts of all moneys received, No. 74, 1964 remitted or paid by him;
- (c) remit to Collectors for other Australian States and to the proper authorities in reciprocating countries moneys received by him in respect of maintenance orders made for the benefit of persons residing in those Australian States or in those countries and payable to or for the benefit of those persons, together with proper accounts in respect of those moneys; and
- (d) pay other moneys received by him to the persons entitled thereto,

and has such other powers, authorities, duties and functions as are specified in this Part or are prescribed.

(3) In all proceedings under this Part, the Collector, or any officer of the Department of Child Welfare and Social Welfare authorized by the Collector, is entitled to appear, to be heard, to give evidence and to call, examine and cross-examine witnesses.

(4) The Collector may by instrument in writing delegate to an officer of the Department of Child Welfare and Social Welfare, an officer of the petty sessions branch of the Department of the Attorney-General and of Justice or a member of the police force any of his powers, authorities, duties and functions under this Part in respect of any case or class of cases specified in the instrument, and that officer or member may act in accordance with the delegation.

69. The provisions of Part VI of the Justices Act, 1902, as amended by subsequent Acts, relating to proceedings against justices with respect to any act done by a justice as a justice extend and apply, with such modifications as are necessary, with respect to acts done by the Collector, or by the Deputy Collector or an Assistant Collector, or any delegate of the Collector, in pursuance of this or any other Act.

DIVISION

No. 74, 1964

DIVISION 2.—*Interstate Maintenance.*

Transmission of New South Wales orders for enforcement in other States.

70. (1) Where a New South Wales order is presently enforceable in New South Wales but is not presently enforceable under the law of any other Australian State, and it appears to the Collector that the defendant is resident in, or proceeding to, another Australian State, the Collector may send to the Collector for that other Australian State—

- (a) three certified copies of the order;
- (b) a Collector's certificate relating to the order;
- (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a request in writing that the order be made enforceable in that other Australian State.

(2) Where—

- (a) a New South Wales order is, under the law of another Australian State, enforceable in that other Australian State; and
- (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that other Australian State or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that other Australian State,

he may send to the Collector for that other Australian State a request in writing that the order be made no longer enforceable in that other Australian State and, for the purposes of this Act, the order shall, upon the sending of the request, be deemed to cease to be enforceable in that other Australian State.

(3) The fact that a New South Wales order has ceased to be enforceable in another Australian State by reason of action taken in that other Australian State as a result

result of a request made under subsection two of this section **No. 74, 1964** does not prevent a further request under subsection one of this section that the order be again made enforceable in that other Australian State.

(4) Where a New South Wales order is, in pursuance of a request under subsection one of this section, made enforceable in another Australian State—

- (a) the order ceases to be enforceable in New South Wales;
- (b) the order remains unenforceable in New South Wales unless and until it ceases to be enforceable in that other Australian State; and
- (c) every warrant or other process under this Act arising out of the order previously issued in New South Wales and not executed ceases to have effect.

71. (1) Where the Collector receives from the Collector for another Australian State—

- (a) three certified copies of an interstate order made in that State;
- (b) a Collector's certificate relating to the order; and
- (c) a request in writing that the order be made enforceable in New South Wales,

Enforcement
in New
South Wales
of orders
made in
other
Australian
States.

he shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in, or proceeding to, New South Wales, send the documents to the clerk of such court as the Collector deems appropriate with a request that the order be registered in that court.

(2) Where a request is so made to the clerk, the clerk shall (whether or not the order is of such a kind as could be made in New South Wales) register the order by filing in the court a certified copy of the order and the Collector's certificate and noting the fact and date of the registration on that certified copy.

(3)

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(3) An interstate order so registered is, until the registration is cancelled, enforceable in New South Wales, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(4) Upon registration of the interstate order, the Collector shall notify the Collector for the other Australian State accordingly and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in New South Wales—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

(5) Where—

- (a) an interstate order is registered in New South Wales under this section; and
- (b) the Collector receives from the Collector for the other Australian State a request in writing that the order be made no longer enforceable in New South Wales,

the Collector shall request the clerk of the court in which the order is registered to cancel the registration of the order, and the clerk shall thereupon cancel the registration by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(6) Where the registration of an interstate order is so cancelled—

- (a) the order ceases to be enforceable in New South Wales;
- (b)

(b) the order remains unenforceable in New South Wales unless and until it is again registered in New South Wales; and

(c) every warrant or other process under this Act arising out of the order previously issued in New South Wales and not executed ceases to have effect.

72. Where an interstate order has been registered in New South Wales under this Division and the Collector has reasonable grounds for believing that the defendant is no longer resident in New South Wales, but is resident in, or proceeding to, another Australian State, he shall forthwith notify the Collector in the State in which the order was made of the fact and shall give him such information as he possesses concerning the whereabouts and intended movements of the defendant.

Collector to notify original State when defendant leaves New South Wales.

73. (1) Where an interstate order made by a court of summary jurisdiction is enforceable in New South Wales by virtue of this Division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to a court for an order discharging, suspending, varying or reviving the interstate order, and that court has jurisdiction to hear and determine the application.

Application for provisional order of variation, etc.

(2) Where a New South Wales order is enforceable in another Australian State by virtue of provisions corresponding with this Division, an application in writing in accordance with the prescribed form may be made by or on behalf of the complainant or the defendant to a court in New South Wales that would have jurisdiction to make an order under section thirty-five of this Act in relation to the New South Wales order for an order discharging, suspending, varying or reviving the New South Wales order, and that court has jurisdiction to hear and determine the application.

(3)

No. 74, 1964
—

(3) The applicant shall cause notice of an application under this section to be served, not less than fourteen days before the hearing of the application, upon the Collector personally or by post and the Collector shall, forthwith upon receipt by him of the notice, notify the Collector for the Australian State in which the interstate order was made, or the New South Wales order is enforceable, as the case may be.

(4) The evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to or by and signed by him.

(5) While a New South Wales order is enforceable in another Australian State under the law of that other Australian State, no application for the discharge, suspension, variation or revival of the order shall be made in New South Wales except in accordance with this section.

Discharge,
suspension
or variation
of order
made in
absence of
defendant.

74. Where—

- (a) an application is made under subsection one of section seventy-three of this Act by a defendant for the discharge, suspension or variation of an interstate order;
- (b) the defendant either did not appear at the hearing of the complaint upon which the original interstate order was made or was not served personally in the State or Territory of the Commonwealth in which that order was made with a summons issued pursuant to the complaint upon which that order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in New South Wales,

the defendant may, in addition to raising any matter that he may raise under section thirty-five of this Act, raise any ground of opposition that he could have raised in the original proceedings.

75.

75. In an application under section seventy-three of this Act, the law to be applied shall, except in matters of practice or procedure, be the law of the State in which the original order was made. No. 74, 1964
Law to be applied.

76. (1) Except as provided in subsection two of this section an order made on an application under section seventy-three of this Act discharging, suspending, varying or reviving a maintenance order shall be provisional only and shall have no effect unless and until confirmed by a competent court of the Australian State in which the maintenance order was made or is enforceable, and shall be expressed accordingly. Order of variation, etc. to be provisional only.

(2) Where the respondent to the application has been served personally in New South Wales with notice of the application or appears on the hearing of the application, any order made on the application shall recite that fact, and the order has effect forthwith in New South Wales.

(3) Where an order made on an application under section seventy-three of this Act is expressed to be provisional, the clerk of the court making the provisional order shall send a certified copy of the order, together with the depositions of the witnesses, to the Collector for transmission to the Collector for the other Australian State.

(4) Where an order referred to in subsection three of this section has been confirmed (whether with or without modification) by a competent court of the other Australian State, the order has effect in New South Wales as so confirmed.

77. (1) Where a provisional order made under the foregoing provisions of this Division is remitted by a court in another Australian State to the court in New South Wales that made the provisional order for the taking of further evidence, the court in New South Wales, or, if requested by the court in New South Wales, another court in New South Wales, shall, after notice has been given to the Collector and to such persons in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the other Australian State. Procedure where provisional order remitted by court of another Australian State.

(2)

No. 74, 1964

(2) If, upon the taking of the further evidence, it appears to the court taking the further evidence that the order ought not to have been made, the court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section seventy-three of this Act.

Confirmation
in New
South Wales
of provi-
sional orders
made in
other
Australian
States.

78. (1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court in another Australian State discharging, suspending, varying or reviving a New South Wales order enforceable in that other Australian State; or

(ii) a provisional order made by a court of another Australian State discharging, suspending, varying or reviving an interstate order made in that Australian State and enforceable in New South Wales by virtue of this Division; and

(b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

the Collector shall, on behalf of the party on whose application the provisional order was made in the other Australian State, apply to the court in New South Wales by or in which the maintenance order was made or is registered for an order confirming the provisional order.

(2) The Collector shall cause notice, in accordance with the prescribed form, of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of such an application, the court may—

(a) confirm the provisional order, either with or without modification;

(b)

(b) discharge the provisional order; or

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(c) adjourn the proceedings and remit the provisional order to the court that made it with a request that that court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in New South Wales as if it were an order to the like effect made by the court in New South Wales.

79. (1) Where an interstate order is enforceable in New South Wales by virtue of this Division—

Proceedings
for enforce-
ment.

(a) all proceedings may be taken for the enforcement of the order; and

(b) the provisions of this Act shall, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if it were a maintenance order made under Part II of this Act.

(2) The Collector may take any proceedings that are authorised by subsection one of this section.

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order (being an order of the kind referred to in paragraph (a) of the definition of "maintenance order" in subsection one of section sixty-six of this Act) is required for the actual support of the person for whose benefit the order was made and that no moneys have been paid under the order since its registration in New South Wales other than any moneys so paid to the Collector.

DIVISION

No. 74, 1964

DIVISION 3.—*Overseas Maintenance.*

Transmission of maintenance orders made in New South Wales for enforcement in reciprocating countries.

80. (1) Where a New South Wales order is presently enforceable in New South Wales but not under the law of any other Australian State and it appears to the Collector that the defendant is resident in, or proceeding to, a reciprocating country, the Collector may send to the Under Secretary—

- (a) three certified copies of the New South Wales order;
- (b) a Collector's certificate relating to the New South Wales order;
- (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d) a request in writing that the Under Secretary should seek to have the New South Wales order made enforceable in that reciprocating country,

and the Under Secretary shall, on receipt of those documents, transmit the documents referred to in paragraphs (a), (b) and (c) of this subsection to the reciprocating country concerned, or cause those documents to be so transmitted, with a request in writing that the New South Wales order be made enforceable in that reciprocating country.

(2) This section does not apply in relation to an order under section fifteen, seventeen, eighteen, nineteen, twenty or twenty-one of this Act, or under any corresponding previous enactment, where the order relates to an illegitimate child or to the mother of an illegitimate child, unless the defendant appeared in the proceedings in which his paternity of the child was held to be established, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.

Power to make provisional order against person resident in reciprocating country.

81. (1) Upon application made in writing in accordance with the prescribed form to a court in New South Wales for a maintenance order of a kind that may be made under section eleven, twelve, thirteen or fourteen of this Act against any person and upon proof that that person is resident in, or proceeding

proceeding to, a reciprocating country, the court may, in the absence of that person, make any order it could have made if a summons had been duly served on that person and he had failed to appear at the hearing. **No. 74, 1964**

(2) An order made under subsection one of this section shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by a competent court in a reciprocating country in which the defendant is resident at the time of that confirmation, and shall be expressed accordingly.

(3) The evidence of any witness who is examined on any such application shall be put into writing and shall be read over to or by and signed by him.

(4) Where a court makes an order under subsection one of this section, the clerk of the court shall send to the Collector—

- (a) the depositions of the witnesses;
- (b) three certified copies of the order; and
- (c) a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing.

(5) Upon receiving the documents, the Collector shall send the documents, together with any information and material the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant to the Under Secretary for transmission to the reciprocating country referred to in subsection one of this section.

(6) Where any such provisional order has come before a court in a reciprocating country for confirmation and the order has by that court been remitted to the court in New South Wales that made the order for the taking of further evidence, the court in New South Wales, or, if requested by the court in New South Wales, another court in New South Wales, shall, after notice has been given to such persons and
in

No. 74, 1964 in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(7) If, upon the taking of the further evidence, it appears to the court taking that further evidence that the order ought not to have been made, that court may rescind the order and may, if it thinks fit, make a fresh provisional order under subsection one of this section.

(8) Where a court takes evidence in pursuance of a request of another court made under subsection six of this section, the first-mentioned court may, for the purposes of subsection seven of this section, have regard to the evidence given at the hearing in the second-mentioned court.

(9) Where a court in a reciprocating country in which the defendant is for the time being resident confirms (either with or without modification) a provisional order made under this section, the order has effect in New South Wales as so confirmed.

(10) Where a court in a reciprocating country confirms (either with or without modification) a provisional order made under this section, then, in any proceedings arising out of or relating to the order, it shall be presumed, unless the contrary is proved, that the defendant was resident in that reciprocating country at the time when the order was confirmed.

Cancellation
of
registration.

82. Where—

- (a) a New South Wales order is, under the law of a reciprocating country, enforceable in that reciprocating country; and
 - (b) the Collector is satisfied that there are reasonable grounds for believing that the defendant is not resident in, or proceeding to, that reciprocating country or it appears to the Collector that there is some other good reason why the order should no longer be enforceable in that reciprocating country,
- the

the Under Secretary may, at the request of the Collector, send, or cause to be sent, to an appropriate authority in that reciprocating country a request in writing that the order be made no longer enforceable in that reciprocating country and, for the purposes of this Act, the order shall, upon the sending of the request, be deemed to cease to be enforceable in that reciprocating country.

83. (1) Where the Under Secretary receives—

Registration
of overseas
orders.

- (a) a certified copy of an overseas order; and
- (b) a certificate signed by an officer of a court or other authority in the reciprocating country relating to the order and containing—
 - (i) a statement that the order is, at the date of the certificate, enforceable in that reciprocating country; and
 - (ii) a statement as to the amount of any arrears due under the order, distinguishing any amount in respect of which the defendant has been imprisoned,

the Under Secretary shall, if it appears to him that there are reasonable grounds for believing that the defendant is resident in or proceeding to New South Wales, send the documents received by him to the Collector.

(2) In the case of an overseas order in the nature of an affiliation order, or an overseas order consequent upon such an order, the Under Secretary shall not send the documents relating to the order to the Collector if it appears to him from those documents that the defendant did not appear in the proceedings on which the order was made or consent to the making of the order.

(3) In the case of an overseas order originating in a country having restricted reciprocity, the Under Secretary shall not send the documents relating to the order to the Collector unless the Under Secretary is satisfied that the order is a maintenance order of such a kind as can be made under Part II of this Act.

(4)

No. 74, 1964

(4) Where the Collector receives from the Under Secretary the documents referred to in subsection one of this section, he shall transmit the documents to the clerk of the Metropolitan Children's Court at Sydney with a request that the order be registered in that court.

(5) Where a request is so made, the clerk shall register the order by filing in the court a certified copy of the order and the certificate relating thereto and noting the fact and date of the registration on that certified copy.

(6) An overseas order so registered shall, until the registration is cancelled, be enforceable in New South Wales, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(7) Upon registration of an overseas order, the Collector shall notify an officer of the court or other authority in the reciprocating country accordingly and cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in New South Wales—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

Confirma-
tion of
provisional
orders
made
overseas.

84. (1) Where—

- (a) an overseas order (other than an order in the nature of an affiliation order or an order consequent upon such an order) has no effect under the law of the reciprocating country in which it is made unless and until confirmed by a court outside that reciprocating country (whether or not it appears from the order that it may be confirmed by a court in New South Wales);

(b)

- (b) a certified copy of the order and the depositions of the witnesses in the proceedings in which the order was made, together with a statement of the grounds on which the making of the order could have been opposed if the defendant had appeared at the hearing, have been received by the Under Secretary; and
- (c) it appears to the Under Secretary that—
- (i) there are reasonable grounds for believing that the defendant is resident in, or proceeding to, New South Wales; and
 - (ii) the order will have effect under the law of the reciprocating country if it is confirmed by a court in New South Wales,

the Under Secretary shall send the documents received by him to the Collector.

(2) In the case of a provisional order made in a country having restricted reciprocity, the Under Secretary shall not send the documents relating to the order to the Collector unless the Under Secretary is satisfied that the order is of such a kind as could be made (otherwise than as a provisional order) under Part II of this Act.

(3) After receipt of the documents by the Collector, a summons may, on the application of the Collector, be issued by any justice calling upon the defendant to appear before a convenient court specified in the summons to show cause why that order should not be confirmed.

(4) At the hearing it shall be open to the defendant to raise any ground of opposition that he could have raised in the original proceedings or any ground of opposition that he could have raised had the proceedings on which the provisional overseas order was made been heard in New South Wales, and the statement referred to in subsection one of this section shall be conclusive evidence that the grounds referred to in that statement are the grounds of opposition that could have been raised in the original proceedings.

(5)

No. 74, 1964

(5) If the defendant, having been served in New South Wales with the summons, does not appear at the hearing, or if the defendant appears at the hearing but fails to satisfy the court that the order ought not to be confirmed, the court may—

- (a) confirm the provisional order (either with or without modification);
- (b) discharge the provisional order; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it, with a request that that court take further evidence and further consider its provisional order.

(6) Where a provisional order is confirmed under this section (whether with or without modification), the order as so confirmed has effect in New South Wales as if it were an order to the like effect made by the court in New South Wales.

(7) If, at the hearing, the court is of opinion that it is necessary to remit the case to the court that made the provisional order for the taking of further evidence, the case may be so remitted.

Order enforceable in New South Wales may be sent to another Australian State.

85. (1) Where an overseas order is enforceable in New South Wales under this Division, and it appears to the Collector that there are reasonable grounds for believing that the defendant has ceased to reside in New South Wales and is resident in, or proceeding to, another Australian State, the Collector may send to the Collector for that Australian State—

- (a) three certified copies of the overseas order;
- (b) a Collector's certificate relating to the order;
- (c) such information and material as the Collector possesses for facilitating the identification, and ascertaining the whereabouts, of the defendant; and
- (d)

- (d) a request in writing that the order be made enforce- No. 74, 1964
able in that Australian State,

and if he does so, shall forthwith notify an appropriate officer in the reciprocating country of the fact that he has so sent the documents.

(2) Where a request is made under subsection one of this section—

- (a) the order ceases to be enforceable in New South Wales and, if the order has been registered in a court in New South Wales, that registration shall be deemed to be cancelled;
- (b) the order remains unenforceable in New South Wales unless and until it is registered, or again registered, in New South Wales; and
- (c) every warrant or other process under this Act arising out of the order previously issued in New South Wales and not executed ceases to have effect.

86. (1) Where—

- (a) the Collector receives from the Collector for another Australian State—
 - (i) three certified copies of an overseas order;
 - (ii) a Collector's certificate signed by the Collector for that Australian State relating to the order; and
 - (iii) a request in writing that the order be made enforceable in New South Wales; and
- (b) it appears from the Collector's certificate that—
 - (i) the order has been registered in, or confirmed by, a court in that Australian State under a law of that Australian State corresponding with this Division; and
 - (ii) the order was, at the date of the certificate, presently enforceable in that Australian State in accordance with that law,

Registration of overseas orders registered or confirmed in another Australian State.

he

No. 74, 1964 he shall, if it appears to him that there are reasonable grounds for believing that the defendant is residing in, or proceeding to, New South Wales, send the documents to the clerk of the Metropolitan Children's Court at Sydney with a request that the order be registered in that court.

(2) Where a request is so made, the clerk shall (whether or not the order is of such a kind as could be made under Part II of this Act) register the order by filing in the court a certified copy of the order and the Collector's certificate and noting the fact and date of the registration on that certified copy.

(3) An overseas order so registered shall, until the registration is cancelled, be enforceable in New South Wales, both as regards any arrears payable under the order and as regards amounts becoming due under the order after it is so registered.

(4) Upon registration of an overseas order, the Collector shall notify the officer of a court or other authority in the reciprocating country accordingly, and shall cause a certified copy of the order to be served upon the defendant, together with a notice of registration of the order in New South Wales—

- (a) specifying the amount, if any, of the arrears due under the order;
- (b) stating that payments under the order are to be made to the Collector; and
- (c) giving an address at which such payments may be made.

Transmis-
sion of docu-
ments where
defendant
not in
New South
Wales.

87. Where the Under Secretary receives documents relating to an overseas order (including a provisional order) that have been transmitted to New South Wales for the purpose of having the order made enforceable or confirmed in New South Wales and it appears to him that the defendant is not resident in, or proceeding to, New South Wales but is resident in, or proceeding to, another Australian State or a reciprocating

reciprocating country other than that in which the order was made, the Under Secretary may, instead of taking steps with a view to the registration or confirmation of the order in New South Wales—

- (a) transmit the documents to the Collector for that other Australian State or an appropriate authority in that other reciprocating country together with such information as he possesses concerning the whereabouts and intended movements of the defendant; and
- (b) give to the officer of a court or other authority in the reciprocating country in which the order was made notice of the fact that he has so transmitted the documents.

88. (1) Where—

- (a) an overseas order is registered or confirmed under this Division; and
- (b) the Collector receives a request in writing made by an officer of the court that made the order or some other competent authority in the reciprocating country that the order be made no longer enforceable in New South Wales,

Cancellation
of
registration.

the Collector shall send the request to the clerk of the Metropolitan Children's Court at Sydney who shall file the request and, if the order is registered under this Division, cancel the registration of the order by noting the fact and date of the cancellation on the certified copy of the order filed in the court.

(2) Where such a request has been so filed—

- (a) the overseas order ceases to be enforceable in New South Wales;
- (b) the order remains unenforceable in New South Wales unless and until it is registered, or again registered, in New South Wales; and

(c)

No. 74, 1964 (c) every warrant or other process under this Act arising out of the order previously issued in New South Wales and not executed ceases to have effect.

Proceedings for enforcement. **89.** (1) Where an overseas order is enforceable in New South Wales by virtue of this Division—

- (a) all proceedings may be taken for the enforcement of the order; and
- (b) the provisions of this Act shall, so far as they are applicable and with such modifications as are necessary, apply to and in relation to proceedings for the enforcement of the order,

as if it were a maintenance order made under Part II of this Act.

(2) The Collector may take any proceedings that are authorised by subsection one of this section.

(3) Where proceedings are so taken by the Collector, the court shall, unless it is satisfied by evidence to the contrary, presume that the enforcement of the order (being an order of the kind referred to in paragraph (a) of the definition of "maintenance order" in subsection one of section sixty-six of this Act) is required for the actual support of the person for whose benefit the order was made and that no moneys have been paid under the order since its registration in New South Wales other than any moneys so paid to the Collector.

Defendant in New South Wales may apply for order of variation, etc. **90.** (1) Where an overseas order is enforceable in New South Wales by virtue of this Division, the defendant may make an application in writing, in accordance with the prescribed form, to the Metropolitan Children's Court at Sydney for an order discharging, suspending or varying the overseas order, and that court has jurisdiction to hear and determine the application.

(2) Where a New South Wales order is enforceable under the law of a reciprocating country in which the defendant is for the time being resident, the complainant may make an application in writing, in accordance with the prescribed form, to the Metropolitan Children's Court at Sydney for an order varying, or (if the order has been suspended) reviving, the order.

(3)

(3) The applicant shall cause notice of an application under this section to be served upon the Collector personally or by post not less than fourteen days before the hearing of the application. No. 74, 1964

(4) The evidence of any witness who is examined at the hearing of any such application shall be put into writing and shall be read over to or by and signed by him.

(5) The court shall, as far as practicable, hear and determine an application under this section as if it were a similar application under Division 4 of Part II of this Act.

91. Where—

- (a) an application is made under subsection one of section ninety of this Act by a defendant for the discharge, suspension or variation of an overseas order; Discharge, suspension or variation of order made in absence of defendant.
- (b) the defendant either did not appear at the hearing of the proceedings upon which the overseas order was made or was not served in the manner referred to in subsection three of section one hundred and four of this Act in the country in which that order was made with a summons issued pursuant to the complaint upon which that order was made; and
- (c) the application is made within six months after service on the defendant of notice of registration of the order in New South Wales,

the defendant may, in addition to raising any matter that he may raise under section thirty-five of this Act, raise any ground of opposition that he could have raised had the proceedings on which the overseas order was made been heard in New South Wales.

92. In an application under section ninety of this Act, the law to be applied shall be the law of New South Wales. Law to be applied.

93.

No. 74, 1964

Certain
orders to be
provisional
only.

93. (1) Where the court proposes to make an order on an application under section ninety of this Act and any court in the reciprocating country will, if the order is provisional only, have jurisdiction to confirm the order, the order shall be provisional only and shall have no effect unless and until confirmed (either with or without modification) by such a court, and shall be expressed accordingly.

(2) Where a provisional order is made in accordance with this section, the Collector shall send a certified copy of the provisional order, together with the depositions of the witnesses, to an officer of a court in the reciprocating country having jurisdiction to confirm the provisional order.

(3) Where a court in the reciprocating country confirms (either with or without modification) a provisional order made on an application under section ninety of this Act, the order has effect in New South Wales as so confirmed.

(4) Notwithstanding anything contained in this section, if a provisional order made on an application under subsection two of section ninety of this Act is confirmed (either with or without modification) by a court of a reciprocating country (not being the country specified in the order) in which the defendant is resident at the time of the confirmation, the order has effect in New South Wales as so confirmed.

Procedure
where
provisional
order re-
mitted by
court in
reciprocating
country.

94. (1) Where a provisional order made in accordance with section ninety-three of this Act is remitted by a court in a reciprocating country to the court in New South Wales that made the provisional order for the taking of further evidence, the court in New South Wales, or, if requested by the court in New South Wales, another court in New South Wales, shall, after notice has been given to such persons and in such manner as the court thinks fit, proceed to take the evidence, and shall cause the depositions of the witnesses to be sent to the court in the reciprocating country.

(2)

(2) If, upon the taking of the further evidence, it appears to the court taking that further evidence that the order ought not to have been made, that court may rescind the order and may, if it thinks fit, make a fresh provisional order on the application under section ninety of this Act.

95. (1) Where the Collector receives—

(a) a certified copy of—

(i) a provisional order made by a court of a reciprocating country discharging, suspending, varying or reviving a New South Wales order enforceable in that reciprocating country; or

(ii) a provisional order made by a court in a reciprocating country discharging, suspending, varying or reviving an overseas order made in that reciprocating country and enforceable in New South Wales by virtue of this Division; and

(b) the depositions of the witnesses who gave evidence at the hearing of the application upon which the provisional order was made,

Confirmation in New South Wales of provisional orders of variation, etc. made in reciprocating countries.

the Collector shall, on behalf of the party on whose application the provisional order was made in the reciprocating country, apply to the court in New South Wales by or in which the maintenance order was made, registered or confirmed for an order confirming the provisional order.

(2) The Collector shall cause notice in accordance with the prescribed form of the application under this section to be served on the respondent to the application not less than seven days before the hearing of the application.

(3) Upon the hearing of any such application, the court may—

(a) confirm the provisional order (either with or without modification);

(b)

900: **Maintenance Act.**

- No. 74, 1964. (b) discharge the provisional order ; or
- (c) adjourn the proceedings and remit the provisional order to the court that made it with a request that the court take further evidence and further consider its provisional order.

(4) Where a provisional order is confirmed under this section (whether with or without modification) the order as so confirmed has effect in New South Wales as if it were an order to the like effect made by the court in New South Wales.

96. (1) Where the Governor is satisfied that the law in any country makes provision for the enforcement in that country of maintenance orders made in another country, the Governor may, by proclamation published in the Gazette, declare that country to be a reciprocating country for the purposes of this Part.

Governor
may declare
reciprocating
countries.

(2) If it appears to the Governor that the jurisdiction of the courts of a country specified, or to be specified, in a proclamation under subsection one of this section to make maintenance orders extends to the making of orders that are not of the same kind as orders that may be made in New South Wales under Part II of this Act he may, by the same or a subsequent proclamation, declare that that country has restricted reciprocity with the State of New South Wales.

(3) In a proclamation made under subsection one or two of this section the Governor may specify, in relation to the country to which the proclamation applies, a date, which may be before or after or the same day as the date of the proclamation, and declare that maintenance orders made in that country on or after that date shall be enforceable in New South Wales in accordance with the provisions of this Division.

(4) The Governor may, by the like proclamation, revoke or vary or further vary any proclamation made under subsection one or two of this section.

(5)

(5) Where a country that has been a reciprocating No. 74, 1964 country ceases to be a reciprocating country—

- (a) a maintenance order made in that country and enforceable in New South Wales by virtue of this Division ceases to be so enforceable; and
- (b) every warrant or other process under this Act arising out of any such order previously issued in New South Wales and not executed ceases to have effect.

but this subsection does not affect the validity of anything done under this Act for the enforcement of a maintenance order while that country was a reciprocating country.

(6) At least once in every year the Collector shall cause to be published in the Gazette a list of the names of the reciprocating countries, showing the respective dates upon which they became reciprocating countries, indicating the date, if any, specified in relation to any such country in accordance with subsection three of this section, and indicating which of those countries are countries having restricted reciprocity.

(7) Production of a copy of the Gazette containing such a list is evidence of the matters stated in the list and of the fact that a country shown in the list as a reciprocating country of either class continues to be a reciprocating country of that class.

DIVISION 4.—*General.*

97. While a maintenance order is enforceable in New South Wales under this Part, all moneys directed by the order to be paid are payable to the Collector, and the receipt of the Collector for any such moneys is a sufficient discharge of the liability of a person to pay those moneys in accordance with the order. Payments to be made to Collector.

98.

No. 74, 1964

Collector
to notify
changes
in orders
enforceable
in other
Australian
States or
reciprocating
countries.

98. Where the operation of a New South Wales order enforceable in another Australian State or in a reciprocating country, or the operation of an interstate order or overseas order enforceable in New South Wales, is affected by an order (other than a provisional order), event or other matter made, occurring or arising in New South Wales of which the Collector has notice, the Collector shall send to the Collector for the other Australian State, or to an appropriate officer in the reciprocating country, a certified copy of the order, or a notice in writing giving particulars of the event or other matter, by which the operation of the order so enforceable has been so affected.

Collector
to note
changes in
orders
made or
enforceable
in New
South
Wales.

99. (1) Where the Collector receives from the Collector for another Australian State or from an appropriate officer in a reciprocating country a certified copy of an order (other than a provisional order), or a notice in writing giving particulars of an event or other matter, made, occurring or arising in that other Australian State, or in that reciprocating country and affecting, in a manner appearing from the certified copy or notice, the operation of a New South Wales order enforceable in that other Australian State or in that reciprocating country, or of an interstate order or overseas order enforceable in New South Wales under this Part, the Collector shall—

- (a) file the certified copy or notice in the court in which the order affected was made or confirmed or is registered; and
- (b) if the complainant or defendant is resident in New South Wales, cause a copy of the certified copy or notice to be served on the complainant or defendant, as the case may be.

(2) Where a certified copy or notice is filed in accordance with subsection one of this section in relation to a maintenance order, the order, event or matter has the like effect in New South Wales as it appears from the certified copy or notice to have in the other Australian State or reciprocating country.

(3)

(3) Subsections one and two of this section do not No. 74, 1964 apply in relation to an order made in a reciprocating country affecting a maintenance order in a manner adverse to the defendant unless it appears from the documents received by the Collector that the defendant appeared on the hearing of the proceedings.

100. (1) For the purposes of this Part, an overseas order (including a provisional order) or a certificate or notice originating in a reciprocating country, that refers to an amount of money (including an amount of arrears) expressed in the currency of a reciprocating country shall be deemed to refer to the amount that was the equivalent amount in Australian currency on the prescribed date on the basis of the telegraphic transfer rate of exchange that prevailed on that date. ^{Conversion of currency.}

(2) For the purposes of this section, a certificate signed by the Collector, or the Collector for another Australian State, and purporting to be based on information obtained by him from a bank, that a specified amount in Australian currency was, on a specified date, the equivalent of a specified amount in another currency on the basis of the telegraphic transfer rate of exchange prevailing on that date is evidence of the matter stated in the certificate.

(3) Where a certificate of a Collector in accordance with subsection two of this section has been filed in a court in New South Wales in relation to an order, certificate or notice, every copy of that order, certificate or notice served on any person shall be accompanied by a copy of the first-mentioned certificate.

(4) Where, under section sixty-eight of this Act, the Collector is required to remit an amount of money to a country outside the Commonwealth, he shall remit such amount in the currency of that country as he is able to remit by the expenditure of that first-mentioned amount.

(5)

904: **Maintenance Act.**

No. 74, 1964: (5) In this section "the prescribed date" means—

- (a) in relation to a maintenance order registered under this Part, or a certificate with respect to the arrears payable under a maintenance order sought to be so registered—the day upon which the order is registered;
- (b) in relation to a provisional order confirmed under this Part—the day upon which the order is confirmed; or
- (c) in relation to an order or notice referred to in subsection one of section ninety-nine of this Act—the day upon which the certified copy of the order or the notice is filed in a court in accordance with that subsection.

**Translation
of orders,
records, etc.**

101. Where a certified copy of an order of a court (including a provisional order), a record of the evidence of a witness or other document arising out of, or relating to, proceedings in a court outside the Commonwealth is not in the English language, it shall not be used for the purpose of registering an order under this Part, or received in evidence in proceedings under this Part, unless it is accompanied by a translation of the document into the English language certified under the hand of an officer of that court to be a correct translation, or bearing the seal of that court, and where such a document is accompanied by such a translation—

- (a) the translation may be received in evidence to the same extent as the document of which it is a translation and shall, unless the contrary is proved, be deemed to be a correct translation;
- (b) all notations made on the document shall be made also on the translation; and
- (c) any copy of the document served on any person shall be accompanied by a copy of the translation.

102. In any proceedings under or for the purposes of this Part, a certificate purporting to be signed by the Collector or the Collector for another Australian State, or an officer of a reciprocating country in which a maintenance order was made or is enforceable, concerning amounts paid or unpaid under a maintenance order is evidence of the facts stated in the certificate.

No. 74, 1964.
Certificate
of payments.

103. (1) For the purposes of this Part and in proceedings under or arising out of this Part, a document purporting to be—

Evidentiary.

- (a) a certified copy of an order (including a provisional order) of a court;
- (b) the record, or a certified copy of the record, of the evidence of a witness in proceedings before a court; or
- (c) a certificate or notice of a kind referred to in this Part,

shall, unless the contrary is proved, be taken to be such a certified copy, record, certificate or notice, and shall be admitted in evidence without proof of the signature of the person purporting to have signed it or of his official position.

(2) The depositions of a witness in proceedings before a court in another Australian State or in a reciprocating country, received in New South Wales for the purposes of this Part, shall be admissible in evidence in proceedings under this Part in a court in New South Wales.

104. (1) Except where the contrary intention appears in this Part, any document required or permitted by this Part to be served on a person shall be served on that person personally.

Service of
documents.

(2)

No. 74, 1964

(2) A document required by subsection four of section seventy-one, subsection seven of section eighty-three, subsection four of section eighty-six, or section ninety-nine, of this Act to be served on a person may be served on that person—

- (a) personally; or
- (b) by post at his usual or last-known place of residence or business.

(3) A reference in this Part to any document being served on a person personally shall be read as a reference to that document being served by—

- (a) delivering a copy of the document to that person; or
- (b) leaving a copy of the document at the usual or last-known place of residence or business of that person with some other person who apparently resides therein or is employed thereat, and is apparently over the age of sixteen years.

PART V.

MISCELLANEOUS.

DIVISION 1.—*Procedural.*

Complaints. **105.** (1) A complaint made for the purposes of this Act shall be in writing made upon oath before a justice of the peace.

(2) The justice before whom any complaint is so made—

- (a) may issue a summons addressed to the defendant commanding him to attend the court upon the hearing of the complaint; or
- (b) if satisfied by oath that the whereabouts of the defendant are unknown to the complainant, or that the defendant is about to move out of the State or into a distant part of the State or has so moved without providing the complainant with adequate means

means of support, may issue a warrant for the ~~No. 74, 1964~~ apprehension of the defendant and for his being brought before a court pursuant to this Act.

(3) Two or more complaints made against a defendant by a complainant, whether on the complainant's own behalf, on behalf of other persons or both on the complainant's own behalf and on behalf of other persons, may be joined in the one form of complaint.

(4) Where, pursuant to subsection three of this section, two or more complaints are joined in the one form of complaint—

- (a) one summons may be issued in respect of those complaints;
- (b) those complaints shall, unless the court otherwise orders, be heard and determined by the court at the same time; and
- (c) two or more orders in respect of those complaints may be joined in the one form of order but the order in respect of each complaint shall, for the purposes of this Act, be deemed to be a separate order.

(5) Where complaints—

- (a) for the maintenance of a child of the family are made by the same complainant against the father as well as against the mother of that child; or
- (b) for the maintenance of an illegitimate child are made by the same complainant against a person alleged to be the father of that child as well as against the mother of that child,

the complaints may, if the court thinks fit, be heard and determined by the court at the same time.

106. (1) Where the defendant does not appear before the court in obedience to a summons issued in relation to a complaint under this Act or on any day to which the hearing of Court may proceed in absence of defendant in certain cases.

No. 74, 1964 of that complaint is adjourned, the court may, upon proof that the summons was duly served on the defendant a reasonable time before the day appointed for his appearance—

- (a) issue a warrant for the apprehension of the defendant and adjourn the hearing of the complaint until the defendant is brought before the court; or
- (b) proceed to hear and determine the complaint in the absence of the defendant.

(2) Where a warrant has been issued for the apprehension of the defendant (whether in the first instance or upon the defendant failing to appear as aforesaid) and the court is satisfied that after strict inquiry and search the defendant cannot be found the court may proceed to hear the complaint in the absence of the defendant.

(3) The inquiry and search made for the defendant for the purposes of this section may be proved by evidence given orally or by the affidavit of the person or persons who made such inquiry and search.

**Applica-
tions to be
in writing.**

107. (1) An application to a court for the purposes of this Act shall be in writing made to the court at which the application is, by the application, set down for hearing.

(2) Except where an ex parte application may be made under this Act, the court may, after service of notice of the application upon such persons as appear to the court to be affected by the application, proceed to hear the application whether or not any person to whom any such notice has been issued is present at the hearing.

(3) Any person on whom any such notice has been served shall be entitled to be heard and may be represented by counsel or an attorney, and may examine and cross-examine the witnesses giving evidence for or against him respectively.

108. (1) A complaint or an application under this Act No. 74, 1964¹ purporting to be made on behalf of a person is, in the absence of evidence to the contrary, deemed to be made on behalf of that person.

Complaints
or applica-
tions made
on behalf
of persons.

(2) Where a complaint or an application under this Act may be made by a person on behalf of a child that person may make the complaint or application whether or not he has been duly authorised to do so.

109. An order made by a court under this Act directing the payment of moneys shall direct that—

Orders
may direct
mode of
payment.

- (a) the moneys be paid to the clerk of the court or to some other person, and at a place, specified in the order;
- (b) the moneys payable under the order for or towards the maintenance of a person be paid, except where otherwise provided in this Act, weekly, monthly or otherwise periodically; and
- (c) the moneys payable under the order, other than moneys referred to in paragraph (b) of this section, be paid either in one sum or by instalments or partly in one sum and partly by instalments.

110. (1) Where an order (in this section referred to as an "original order") under this Act directs the payment of moneys, the court may by that or a subsequent order, make such orders as it thinks necessary relating to the matters referred to in section one hundred and nine of this Act, for regulating the receipt and disbursement of the moneys, for investing and applying the proceeds of the sale of any goods, chattels or securities directed to be sold or any annuity, rents or income directed to be collected, under an order made under section forty-seven of this Act, for ensuring the proper appropriation of those moneys or for causing any child for whose benefit those moneys are payable to be properly brought up and educated.

Further
orders.

(2)

910 **Maintenance Act.**

No. 74, 1964 (2) An order may be made under subsection one of
— this section, at the discretion of the court—

- (a) either with or without any application for the order ;
and
- (b) either upon notice of any such application being
given to the defendant against whom the original
order was made or without any such notice being
given.

Court may
set aside
order made
in the
absence of
the defen-
dant or
respondent.

111. (1) Where the court proceeds pursuant to the provisions of section one hundred and six of this Act to make an order against a defendant who was not served with a summons and who did not appear at the hearing, the defendant may, within a period of twenty-one days after the time when the order comes to his knowledge (proof of which time lies upon the defendant), make application to the court which made the order to set aside the order and to re-hear the matter of the complaint in respect of which the order was made.

(2) Notice in writing of intention to make an application under subsection one of this section shall be lodged with the clerk of the court and a copy thereof shall be served, either personally or by post, a reasonable time before the day specified in the notice for the making of such application, on the person who was the complainant in the proceedings in which the order was made.

(3) Upon proof of due service of the notice the court may, if it thinks it just in the circumstances of the case so to do, set aside the order made in the absence of the defendant on such terms as to costs as it thinks fit and proceed to hear and determine the matter of the complaint in respect of which the order was made in accordance with the provisions of Part II of this Act.

(4) Any order made pursuant to subsection three of this section may be made to take effect from any date upon which the order set aside could have been made to take effect pursuant to the provisions of section twenty-eight of this Act.

112. (1) Where—

No. 74, 1964

- (a) a complaint (in this section referred to as an "original complaint") made under section fifteen, section seventeen or subsection three of section nineteen of this Act has been dismissed;
- (b) on appeal, an order (not being an order for the dismissal of the complaint) made upon such a complaint has been reversed, quashed, or set aside, or an order for the dismissal of such a complaint has been affirmed or confirmed; or
- (c) on appeal or otherwise, the court by which an order (not being an order for the dismissal of the complaint) was made upon such a complaint has been restrained from proceeding or further proceeding with the order,

Further complaint after dismissal of earlier complaint, etc., in affiliation proceedings.

a further complaint may be made against the defendant against whom the original complaint was made and in respect of the same child if the further complaint contains an allegation that facts or circumstances were in existence at the time of the making of the original complaint that have not previously been disclosed to the court and that were not and could not by the exercise of reasonable diligence have previously been known to the complainant who made the original complaint.

(2) The court shall receive and consider the evidence recorded at the original hearing and on any appeal as well as any fresh evidence submitted.

(3) If at the conclusion of the evidence submitted by the complainant no fresh evidence material to the question of paternity has been produced, the complaint shall be dismissed.

DIVISION 2.—*Appeals.*

113. (1) Except where otherwise provided, any person aggrieved by any decision of a court under this Act may appeal against that decision in the manner provided by Part V (sections one hundred and twenty-three and one

No. 74, 1964 one hundred and twenty-four excepted) of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part (those sections excepted) so far as they are not inconsistent with the provisions of this Act shall apply with such modifications as may be necessary to and in respect of any such appeal.

(2) Where an appeal is made under this section against an order directing the payment of moneys or against an order varying such an order, the court to which the appeal is made may stay the order and, if it thinks fit, in addition make a temporary order to take effect during the pendency of the appeal.

(3) A court making a temporary order under subsection two of this section may exercise all the powers of the court that made the stayed order.

(4) A temporary order made under subsection two of this section may be enforced in the same manner in all respects as if it were a final order, but shall not be subject to appeal, nor except by the court by which it was made, to discharge, suspension or variation.

(5) Where an order has been made under section seventeen of this Act for the benefit of a pregnant woman, and the defendant gives notice of intention to appeal to a court of quarter sessions, and in that notice requests that the appeal be not heard before the birth of the child, the appeal shall be heard and determined at the court of quarter sessions first held after a period of one month after the birth has elapsed, or at any court of quarter sessions succeeding that first held court and to which the hearing is postponed, but no such appeal shall be heard before the holding of that first held court.

(6) At the request of either party to an appeal against a decision on a complaint made by or on behalf of a child the child shall be produced in court.

(7) The provisions of section sixteen of the Child Welfare Act, 1939, as amended by subsequent Acts, shall apply to the hearing of an appeal under this section.

DIVISION

DIVISION 3.—General.

No. 74, 1964

174. (1) In any proceedings under this Act, the court may—

Court may require defendant to state his employer, etc.

- (a) direct the defendant to attend before the court at a specified time to be examined concerning his means and ability to comply with any order made against him under this Act;
- (b) direct the defendant to state to the court or to furnish to the court within a specified period a statement signed by the defendant specifying—
 - (i) the name and address of his employer or, if he has more employers than one, of each of his employers;
 - (ii) particulars as to the defendant's earnings; and
 - (iii) such particulars as the court thinks are necessary to enable the defendant to be identified by any of his employers; or
- (c) direct any person who appears to the court to be indebted to the defendant or to be the employer of the defendant to furnish to the court, within any time fixed by the court, a statement signed by him or on his behalf containing such particulars as are specified in the direction of his indebtedness to the defendant or of all the earnings of the defendant that became payable by that person during a specified period, as the case may be.

(2) A document purporting to be a statement referred to in subsection one of this section shall be received in evidence in any proceedings under this Act and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

(3) Every person who—

- (a) without reasonable cause or excuse, refuses or fails to comply with a direction under this section that is applicable to him; or

(b)

No. 74, 1964: (b) in any statement furnished to a court pursuant to the provisions of this section, makes a statement that he knows to be false or misleading in a material particular or does not believe on reasonable grounds to be true,

is guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Payments
under orders.

115. (1) Subject to any order made under this Act with respect to the appropriation of moneys any moneys received under an order for the payment of moneys made under this Act by the person entitled to receive those moneys shall be deemed a payment made by the defendant to that person, so as to discharge, to the extent of the moneys received, firstly any sums due and unpaid under the order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the order that were payable by the defendant in respect of any previous proceedings for the enforcement of the order.

(2) In any proceedings relating to an order for the payment of moneys enforceable under this Act the production of books purporting to be the books of account of a court in relation to the order shall be evidence that the payments to which the entries therein purport to refer have been made and that those payments are the only payments that have been made.

(3) Where—

- (a) the clerk of the court or other person to whom the payment of moneys is, pursuant to paragraph (a) of section one hundred and six of this Act, directed to be made under two or more orders made against the same defendant receives from the defendant an amount that is less than the total amount payable under those orders; and
- (b) no order for the appropriation of that amount has been given by the defendant to the clerk or other person,

the clerk or other person shall, subject to subsection one of this section and to any order made under subsection one of section one hundred and ten of this Act, appropriate that amount

amount to the payment of the sums payable under each of No. 74, 1964 those orders in such manner as the clerk or other person thinks proper or where a manner is prescribed in that manner.

116. (1) Except where otherwise provided by this Act—^{Service of documents.}

(a) a summons, notice, or other document may be served on any person in the manner provided for the service of summonses by the Justices Act, 1902, as amended by subsequent Acts; and

(b) a notice may be served by post addressed to the person to whom it is directed at his last known place of residence or business.

(2) If in any proceedings in connection with which any notice has been served in accordance with subsection one of this section it appears to the court that the person to whom the notice is directed has not or may not have received it, the court may direct that the notice be again served on that person in such manner as it thinks fit.

(3) Service of a summons, notice or other document in a manner authorised by this Act may be proved by the oath of the person who served it, or by affidavit, or otherwise.

117. In any proceedings under this Act before a court, ^{Costs.} the court may order the payment of such costs by such persons, being parties to the proceedings as it thinks fit.

118. (1) The Minister may authorise one or more ^{Appearance by officers of the Public Service.} officers of the Public Service to appear on behalf of the complainant or applicant in any proceedings under this Act to which the officer's authority extends.

(2) Any such authority may be given in respect to particular proceedings, to all proceedings, or any class of proceedings, under this Act.

(3) An officer so authorised shall be entitled to appear and be heard in any proceedings to which his authority extends as if he were the complainant or applicant in those proceedings.

(4) Professional costs may be allowed in respect of any such appearance.

(5)

946 **Maintenance Act.**

No. 74, 1964 (5) Any professional costs allowed to the person for whom any such officer appears shall, when recovered, be paid to the Consolidated Revenue Fund.

Proceedings for offences. **119.** Proceedings for offences against this Act or the regulations under this Act may be taken in a summary manner before a court.

Regulations. **120.** (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

- (a) prescribing any forms to be used under this Act or in connection with any proceedings under this Act;
- (b) the practice and procedure of courts in any proceedings under this Act;
- (c) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may impose a penalty not exceeding fifty pounds for any offence against the regulations.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then in session and, if not, then within fourteen sitting days after the commencement of the next session.

(4) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House disallowing any regulation or part thereof, that regulation or part thereupon ceases to have effect.

SCHEDULES.

SCHEDULES.

No. 74, 1964

SCHEDULE ONE.

Sec. 2 (1).

REPEAL OF ACTS.

Year and Number of Act.	Short title of Act.
1901 No. 17	Deserted Wives and Children Act, 1901.
1913 No. 9	Deserted Wives and Children Amending Act, 1913.
1919 No. 33	Interstate Destitute Persons Relief Act, 1919.
1931 No. 33	Deserted Wives and Children (Amendment) Act, 1931.
1960 No. 34	Interstate Destitute Persons Relief (Amendment) Act, 1960.

SCHEDULE TWO.

Sec. 2 (2).

AMENDMENTS OF ACTS.

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Amendment.
1898 No. 11 ..	Evidence Act, 1898.	Section 43A— Omit paragraph (a) and insert in lieu thereof the following paragraph:— (a) under the Maintenance Act, 1964.
1899 No. 14 ..	Matrimonial Causes Act 1899.	Omit from paragraph (c) the words "or Part XVI". Section 90A— Subsection (2)— Omit the subsection and insert in lieu thereof the following subsection:— (2) The complaint shall be dealt with in like manner as a complaint under Part II of the Maintenance Act, 1964, and the provisions of that Part shall apply accordingly.
1900 No. 40 ..	Crimes Act, 1900.	Section 573— Omit the words "Deserted Wives and Children Act, 1901" and insert in lieu thereof the words "Maintenance Act, 1964".

SCHEDULE

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Amendment.
1901 No. 41 ..	Apprentices Act, 1901	Section 8— After the word “Justices” where secondly occurring insert the words “or a children’s court established under the Child Welfare Act, 1939, as amended by subsequent Acts.”
1902 No. 27 ..	Justices Act, 1902.	Section 82— Subsection (2)— Omit the words “ <i>Deserted Wives and Children’s Act, 1901</i> ” and in the ‘ <i>Lunacy Act of 1898</i> ’ and insert in lieu thereof the words “Maintenance Act, 1964”.
1932 No. 33 ..	Farmers’ Relief Act, 1932.	Section 9— Subsection (2)— Omit from subparagraph (iii) of paragraph (a) of the proviso the words “Deserted Wives and Children Act, 1901-1931, for the support of his wife or children” and insert in lieu thereof the words “Maintenance Act, 1964, for the support of any person”. Omit subparagraph (iv) of paragraph (a) of the proviso.
1937 No. 35 ..	Statute Law Revision Act, 1937.	Omit so much of the Second Schedule as amended the Deserted Wives and Children Act, 1901, and the Interstate Destitute Persons Relief Act, 1919.
1939 No. 17 ..	Child Welfare Act, 1939.	Section 2— Omit the matter relating to Part XVI. Omit the matter relating to Division 1 and Division 2 of Part XX. Section 12— Subsection (1), paragraph (c)— Omit the paragraph and insert in lieu thereof the following paragraph:— (c) shall exercise the powers and authorities conferred on the court by the Maintenance Act, 1964. Subsection (1), paragraph (c)— Omit the paragraph.

SCHEDULE TWO—*continued.*

No. 74, 1964

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Amendment.
1939 No. 17..	Child Welfare Act, 1939— <i>continued.</i>	<p>Section 13— Subsection (1)— Omit the words “Deserted Wives and Children Act, 1901-1939” and insert in lieu thereof the words “Maintenance Act, 1964”.</p> <p>Section 14— Subsection (1)— Omit the words “, except those matters in which a justice or justices has or have jurisdiction under the Deserted Wives and Children Act, 1901-1939,”.</p> <p>Section 16— Subsection (3)— Omit the words “Part XVI of this Act” and insert in lieu thereof the words “the Maintenance Act, 1964”.</p> <p>Section 18— Subsection (1)— Omit the words “or Part XVI”. At the end of the section insert the following new subsection:— (4) This section does not apply to any decision in any proceedings under the Maintenance Act, 1964.</p> <p>Section 19— After the words “this Act” where firstly occurring insert the words “or in the case of proceedings under the Maintenance Act, 1964, with that Act,”. Omit the words “, other than proceedings under Part XVI of this Act”.</p> <p>Section 59A— Omit the words “section 104A of this Act” and insert in lieu thereof the words “section twenty-seven of the Maintenance Act, 1964”.</p> <p>Section 60— Subsection (3)— After the words “this Act,” insert the words “as in force at any time before the repeal of that Part by the Maintenance Act, 1964,”. After the figures “1901-1939,” insert the words “or for the payment of preliminary expenses or maintenance under the Maintenance Act, 1964,”.</p>

SCHEDULE

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Amendment.
1939 No. 17 ..	Child Welfare Act, 1939—continued.	<p>Section 61— Subsection (1)— Omit the words “Part XVI of this Act.” and insert in lieu thereof the words “Part II of the Maintenance Act, 1964.”</p> <p>For the purposes of enforcing any such order, a certificate purporting to be under the hand of the Director, or any officer authorised by the Director to give such a certificate, and to state the amount due under the order, shall be prima facie evidence of the amount due under the order.”</p> <p>Part XVI— Omit the Part.</p> <p>Section 129— Subsection (1)— Omit the words “Where an order to pay maintenance for the support of a child or for the use of a wife and the support of a child has been made under the Deserted Wives and Children Act, 1901-1939, or where an order to pay preliminary expenses or maintenance for the support of an illegitimate child or” and insert in lieu thereof the words “Where an order for the maintenance of any person or for the payment of preliminary expenses is in force under the Maintenance Act, 1964, or where an order to pay”.</p> <p>Part XX, Divisions 1 and 2— Omit the Divisions.</p>
1952 No. 9 ..	Prisons Act, 1952.	<p>Section 4— At the end of paragraph (d) of the definition of “convicted prisoner” insert the words “, or Part III of the Maintenance Act, 1964”.</p> <p>Section 20— Subsection (4)— After the word “Acts,” insert the words “or Part III of the Maintenance Act, 1964,”.</p>

SCHEDULE TWO—*continued.*

No. 74, 1964

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Amendment.
1952 No. 9 ..	Prisons Act, 1952 — <i>continued.</i>	Section 21— Subsection (1)— After the word “Acts,” where secondly occurring insert the words “or Part III of the Maintenance Act, 1964.”
1958 No. 22 ..	Matrimonial Causes (Amendment) Act, 1958.	Section 52— Omit the section. Section 1— Subsection (3)— Omit the subsection.
1960 No. 21 ..	Deserted Wives and Children (Amendment) Act, 1960.	Section 3— Omit the section. Section 1— Subsection (3)— Omit the subsection. Section 2— Omit the section. Section 3, paragraphs (b), (c), (d), (e), (f) and (g). Omit the paragraphs.

SCHEDULE THREE.

Sec. 2 (3).

CITATION OF ACTS.

Column 1.		Column 2.
Year and Number of Act.	Short title of Act.	Citation.
1899 No. 14 ..	Matrimonial Causes Act 1899.	Matrimonial Causes Act, 1899-1964.
1901 No. 41 ..	Apprentices Act, 1901	Apprentices Act, 1901-1964.
1902 No. 27 ..	Justices Act, 1902 ..	Justices Act, 1902-1964.
1932 No. 33 ..	Farmers' Relief Act, 1932.	Farmers' Relief Act, 1932-1964.
1939 No. 17 ..	Child Welfare Act, 1939.	Child Welfare Act, 1939-1964.
1952 No. 9 ..	Prisons Act, 1952 ..	Prisons Act, 1952-1964.
1958 No. 22 ..	Matrimonial Causes (Amendment) Act, 1958.	Matrimonial Causes (Amendment) Act, 1958-1964.